

EXHIBIT H

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 PAVLE ZIVKOVIC, *et al.*,

4 Plaintiffs,

5 v.

17 CV 553 (GHW)

6 LAURA CHRISTY LLC, doing
7 business as Valbella, *et al.*,

8 Defendants.

Hearing

New York, N.Y.
October 25, 2023
10:15 a.m.

9
10 Before:

11 HON. GREGORY H. WOODS,

12 District Judge

13
14 APPEARANCES

15 JOSEPH & KIRSCHENBAUM LLP
Attorneys for Plaintiffs

16 BY: D. MAIMON KIRSCHENBAUM
LUCAS BUZZARD

17
18 BAKER & HOSTETLER LLP
Attorneys for Interested Party Rosey Kalayjian
19 BY: MAXIMILLIAN S. SHIFRIN
MICHAEL S. GORDON

1 (Case called)

2 MR. KIRSCHENBAUM: Good morning, your Honor, Maimon
3 Kirschenbaum and Lucas Buzzard for plaintiff.

4 THE COURT: Good. Thank you very much. Good morning.

5 MR. SHIFRIN: Good morning, Max Shifrin and Michael
6 Gordon for Ms. Kalayjian.

7 THE COURT: Thank you very much. Good morning.

8 First, thank you all for being here. We are here for
9 a hearing with respect to the plaintiffs' application for an
10 order of attachment as to the assets of Ms. Kalayjian.

11 Counsel, thank you for the written submissions in
12 connection with this application. I have reviewed them.

13 Before we proceed, let me just ask counsel, does
14 either side wish to or expect to present any evidence to the
15 Court in connection with this application beyond the materials
16 that have been submitted in writing in connection with your
17 briefing of the matter?

18 Counsel, first, for plaintiff.

19 MR. KIRSCHENBAUM: Not for plaintiff, your Honor.

20 THE COURT: Thank you.

21 Counsel for Ms. Kalayjian.

22 MR. SHIFRIN: No, your Honor.

23 THE COURT: Thank you very much.

24 I have reviewed the materials that the parties have
25 submitted. I have some questions for you, counsel. If there

1 is anything that either side would like to add to your written
2 submissions to the Court, however, I'm happy to hear from you.
3 As I say, I have reviewed the written submissions to date.
4 Still, if there is anything that you'd like to highlight before
5 I ask you a handful of questions, I'm happy to hear from you.

6 Let me start, if I can, first, with counsel for the
7 plaintiff.

8 Is there anything that you would like to add?

9 MR. KIRSCHENBAUM: Your Honor, a couple of quick
10 points without making the full presentation, because it sounds
11 like your Honor has questions lined up.

12 Obviously, there are three statutes here at play. For
13 all of them I think one of the important questions is -- one of
14 the important recognitions is we are not talking about, was
15 there consideration, like is there consideration for a
16 contract.

17 The question is, for each of them, was there
18 reasonably equivalent value, and for each of the transactions
19 there is not a shred of evidence that either there was value
20 that was taken into account or that the -- not that there was
21 an antecedent debt that David owed Rosey any money. There is
22 no record of that. There is no evidence of that. There is
23 certainly no evidence that any of the many transfers in
24 question were to satisfy any kind of antecedent debt. There is
25 plenty of case law that hold defendant -- that would hold the

1 transferee to that kind of standard.

2 I think it's also an important recognition that this
3 is not a punishment to the transferee for receiving these
4 things. It's simply the protection of the creditors who had a
5 right to this money and have now had it all dissipated.

6 Another important point is, the issue of joint
7 tenancy. I am not sure where the Kalayjian party is, what they
8 are trying to argue. I think that the law is clear that joint
9 tenancy means that while they both have access to the funds,
10 the creditors can levy an entirely joint account. The relevant
11 analysis here is before the money went into the joint account,
12 it was collectible by a plaintiff. After the money went into
13 the joint account, it was collectible by plaintiff. After the
14 money left the joint account, it was not collectible -- it is
15 not collectible by plaintiff unless this levy is issued.

16 Another important theme, and I could go through this
17 in more detail, but I am sure your Honor is familiar with this,
18 is the total contradictions between Ms. Kalayjian's testimony
19 at her deposition, at times not even knowing what these
20 transfers were about, and at other times having a completely
21 full picture of what the transactions were based on.

22 Oak Grove Road. The shares in Oak Grove Road is a
23 great example. At times she said she owned the whole 90
24 percent. At other times she said she was promised 66. In her
25 deposition she said the 66 recitation in the amendment was a

1 mistake. It's all over the place.

2 Then, to make things even worse and possibly even most
3 significantly, is David Ghatanfard's story totally doesn't line
4 up with her story at all.

5 I think those are our main points. I'm happy to
6 address that specifically, if your Honor wants, or to answer
7 whatever questions your Honor has ready for me.

8 THE COURT: Thank you.

9 Let me turn to counsel for Ms. Kalayjian.

10 Counsel, is there anything that you'd like to add to
11 your written submissions or focus on, or is there anything that
12 you would like to say in response to counsel for plaintiffs'
13 remarks?

14 MR. SHIFRIN: Thank you, your Honor.

15 I am certainly prepared to address the Court's
16 questions and to talk about the issues and the transfers in
17 detail. This is, after all, a transfer-by-transfer analysis.

18 But what I'd like to do at the moment, if I may, just
19 to take a minute and step back and look at this motion
20 holistically. I do not mean to besmirch opposing counsel when
21 I say this, but I do think that there is a certain callousness
22 to this motion. There is a certain scorched-earth nature to
23 it. There is an indifference to the last 20 years of Rosey
24 Kalayjian's life, which she has submitted to the Court in
25 painstaking, highly personal detail.

1 Plaintiffs are going after virtually every asset Rosey
2 has, liquid and illiquid alike, without regard to any of the
3 context that establishes her rights to those assets without any
4 regard to her life.

5 What are we talking about here, your Honor? We are
6 talking about Rosey's rights to two of the homes that she has
7 poured her life into over nearly two decades, homes that she
8 has paid for, homes that were hers, homes that she has improved
9 dramatically over many years. Plaintiffs want to take that
10 from her. We are talking about Rosey's livelihood, her
11 interests in a restaurant that she envisioned, spearheaded,
12 invested in, developed, and for which she serves as the
13 director of operations. Plaintiffs want to take that from her
14 as well.

15 What else are we talking about? We are talking about
16 the proceeds of a sale of a business that she herself ran and
17 operated without any help from Mr. Ghatanfard. Plaintiffs want
18 to take that income from her as well.

19 Your Honor, I get it. Plaintiffs are judgment
20 creditors. Judgment creditors have rights. But Rosey isn't a
21 judgment debtor. Rosey Kalayjian isn't David Ghatanfard. She
22 has her own identity, she has her own history, she has earned
23 her own keep, and she has her own rights. And implicit in
24 plaintiffs' motion is that Rosey isn't her own person, that she
25 doesn't have her own rights, that she is just David, that

1 everything that she has is David's. That's at odds with
2 reality, that's at odds with the evidence, it's at odds with
3 the law. Plaintiffs' inability in three briefs, your Honor, to
4 meaningfully address the substance of Rosey's argument, to
5 meaningfully rebut the evidence Rosey offered spanning two
6 decades of her professional and personal life proves the point.

7 Now, as I said at the outset, your Honor, at the end
8 of the day the disposition of plaintiffs' motion requires a
9 transfer-by-transfer analysis. They need to show a probability
10 of success on the merits to support an attachment, not
11 generally by creating this vague specter of impropriety with
12 respect to everything under the sun. But on a
13 transfer-by-transfer basis they need to show that they are
14 probably going to be successful. It is 50/50 or less with
15 respect to any of these transfers or any component of them.
16 The motion has to be denied and the restraints on her assets
17 lifted.

18 I submit to the Court that they have fallen well short
19 of carrying their burden on any of these transfers. They have
20 painted a misleading picture devoid of the relevant context,
21 and they fail to adequately rebut the arguments Rosey has made
22 and the evidence that she has provided in her opposition. An
23 order of attachment, your Honor, demands more.

24 I'm happy to go into the relevant details of the
25 transfers here, I am happy to address any questions the Court

1 has, or I'm happy to turn it back over to plaintiffs' counsel
2 and we can take it from there.

3 THE COURT: If you would like to talk about each of
4 the transfers, I'm happy to hear from you, and then I'll hear
5 from counsel for plaintiff.

6 MR. SHIFRIN: Certainly, your Honor.

7 There are certain things that I think are worth
8 responding to that plaintiffs' counsel said at the outset.

9 Let's talk about these depositions that appear to be
10 the elephant in the room. The depositions that they are
11 pointing to were taken in the companion case, the 2022 action,
12 which is a successor liability action. This case was recently
13 reassigned from this Court to Judge Subramanian.

14 The depositions at issue there pertain to whether
15 Valbella At The Park was a successor entity to Valbella
16 Midtown. It did not pertain to any of these transfers, and the
17 depositions in those cases took place well before the temporary
18 restraining order application was filed, the motion for an
19 attachment was filed.

20 Counsel to Ms. Kalayjian had no opportunity to
21 prepare, to discuss these issues. She had no idea what was
22 coming her way at the time. It was a completely different
23 issue in those cases. So I don't think that the deposition
24 testimony from an unprepared witness, who is blindsided by
25 these transfers, in a case where frankly they weren't relevant,

1 your Honor -- if we were counsel at the time, I think we would
2 have objected to the questioning all together, because it
3 simply had nothing to do with whether Valbella At The Park was
4 a successor entity to Valbella Midtown. No objections were
5 made.

6 Putting that aside, your Honor, there are other things
7 that I can respond to plaintiffs' counsel about, but let's get
8 into some of the details here in terms of what we think is the
9 way to approach the analysis.

10 I think the starting point of the analysis has to be
11 the following reality. At an absolute minimum here, we are
12 talking about joint assets to which Rosey has a 50 percent
13 entitlement, at an absolute minimum. The transfers in this
14 case not only passed through a joint account, which, as we say
15 in our papers, your Honor, absolutely has legal significance,
16 the assets themselves that were deposited into the joint
17 account were the type of joint assets that you would expect to
18 be deposited into the joint account.

19 What do I mean by that? For example, we are talking
20 about the proceeds from the sale of the Canterbury House in
21 Harrison, New York that Rosey and David shared for 12 years.
22 Why wouldn't be that deposited into the joint account. Why
23 wouldn't that be a joint asset, given her payment of the
24 mortgage on that house from the joint account, which by the
25 way, your Honor, was opened in 2011, years before this lawsuit

1 was brought.

2 Her contribution to the deposit when they bought the
3 house. The house was half hers, for all intents and purposes,
4 and there was nothing unusual about depositing the proceeds of
5 a joint house that she poured her life into over the course of
6 12 years, including personal tragic detail that she recounted
7 in her declaration. There is no reason that such an asset,
8 that the sale of such an asset wouldn't be a joint asset,
9 wouldn't be deposited into a joint account, and wouldn't be 50
10 percent Rosey's. That's the starting point.

11 The same goes for the refinancing of the Southampton
12 house and the transfer of title on that house. That house is
13 Rosey's. David testified that it was a joint house. He
14 testified that the Harrison house was a joint house as well.
15 They had an understanding. They had a handshake agreement.
16 This is how people live their lives.

17 Title is not dispositive here. It just isn't,
18 especially in the context of a fraudulent transfer action. She
19 contributed blood, sweat, and tears to that house in the form
20 of gut renovations. She paid the mortgage of that house from
21 the joint account, just as she did for the Canterbury House,
22 and the same thing goes for the other cash deposits, including
23 income from the various restaurants deposited into the joint
24 account. These were the joint assets of life partners, and the
25 statutory rights that the New York banking law gives Rosey to

1 these assets cannot just be stripped.

2 THE COURT: Can I pause you on the deposits from the
3 businesses.

4 MR. SHIFRIN: Sure.

5 THE COURT: What was the nature of the transfers from
6 the businesses? Were they equity distributions?

7 MR. SHIFRIN: They were income -- our understanding
8 was, it was income, presumably equity distributions.

9 THE COURT: Thank you.

10 Please proceed.

11 MR. SHIFRIN: These deposits of income were joint
12 assets that belonged to both of them as a starting point, and
13 the New York banking law gives Rosey a statutory right to these
14 assets that cannot be stripped away. We understand that
15 judgment creditors have rights, but Rosey has rights too.
16 Judgment creditors' rights don't supersede other rights that
17 people have to property. They have rights to David's property,
18 but not to Rosey's property. That is the absolutely key
19 distinction here with respect to every dollar that passed
20 through the joint account.

21 Again, your Honor, I just want to just flag one issue
22 here. It seems like the right point to do it. Certainly there
23 are situations where you can imagine a joint account being
24 opened after a judgment has been entered and the joint
25 account -- the joint account holders are insiders, but they

1 have no history of using a joint account and it was clearly
2 done for fraudulent purposes, and the money that went into the
3 joint account was clearly not a joint asset. It was just some
4 other money that clearly belonged to the judgment debtor. In
5 those situations it's an entirely different story and, under
6 New York law, there is a fraud exception to these types of
7 transfers using a joint account in that way, and the case law
8 that we cite explains that.

9 But that's not what we are dealing with here, your
10 Honor. We are dealing with ordinary deposits from a life and
11 business partnership into a joint account. Rosey is entitled
12 to that.

13 The Connecticut case that plaintiffs' counsel cited in
14 their reply brief provides, frankly, a great example of a type
15 of scenario where disregarding the joint account, significance
16 of the joint account makes sense. In that case, the joint
17 account was opened after the claims were brought. In that
18 case, the spouse admitted that she transferred the money to her
19 account in order to avoid judgment creditors getting that
20 money. She admitted that. There was zero evidence of
21 consideration. There was all sorts of discovery in proprieties
22 and failures that eventually resulted in a default judgment
23 against her.

24 In short, the situation is completely different than
25 the situation here. The joint account has significance. We

1 can't just disregard it. And more to the point, the money, the
2 types of assets that are deposited into the joint account here
3 are clearly valid and not fraudulent on their face because they
4 have a history of being -- we have a history of similar
5 deposits preceding the lawsuit in this case.

6 Most significantly, as we spend some considerable time
7 in our briefing emphasizing, is the sale of the restaurant to
8 Valbella in January of 2016. That mirrored, mirrored the
9 transfers that plaintiffs are seeking to deem fraudulent here
10 and turn over. There was no lawsuit. There was no debt. How
11 is a deposit and a transfer prelawsuit that mirrors subsequent
12 transfers, how does that -- let me rephrase, your Honor. Is
13 that fraudulent too? How do we distinguish between these? How
14 did they coexist?

15 At the end of the day, if they did it before the
16 lawsuit and it was consistent with their pattern and practice,
17 that means the subsequent transfers after the lawsuit, which we
18 can defend and we do defend through a 14-page affidavit and
19 multiple, multiple exhibits, 43 exhibits, they are the same.
20 It had nothing to do with the lawsuit. It had to do with their
21 pattern of practice of reimbursing each other, of sharing their
22 assets, pooling their assets as life and business partners.

23 Those are the big-picture items I wanted to raise, but
24 I'm happy to delve deeper into the individual transfers. I
25 think with respect to the OGR transfer specifically, which I

1 think is kind of separate and distinct from the others, in that
2 this wasn't an antecedent debt issue; this was just a
3 straight-up consideration issue that was provided and reflected
4 in detail in the amendment to the operating agreement that
5 plaintiffs themselves attached and then proceeded to ignore
6 and, in three briefs, have yet to rebut in any way, shape, or
7 form. Instead they are relying on a boilerplate articulation
8 of 10 percent -- \$10 worth of consideration that contracts
9 often include, and we have cited cases, your Honor, frankly,
10 that are completely dispositive, holding that this sort of
11 reliance on a boilerplate consideration provision of \$10 is
12 inadequate and is meritless.

13 I just want to reemphasize the quote from the case
14 that we cited, which is *Motorola v. Abeckaser*. It's Eastern
15 District of New York case, 2010. Plaintiff's sole asserted
16 basis for questioning that fair consideration was paid is the
17 fact that the deed states that the property was transferred,
18 quote, in consideration of \$10 and other valuable
19 consideration. Absent some further ground for doubting the
20 veracity of the records indicating that the property was sold
21 for \$400,000 and the statements in defendant's answer
22 confirming the same, the plaintiff has not met its burden of
23 demonstrating consideration was lacking.

24 Your Honor, that parallels the facts here perfectly.
25 That is what we are dealing with here. We have express

1 evidence of specific consideration, specific money transfers
2 from Ms. Kalayjian, and we have a contract that acknowledges
3 the receipt and the transfer of those records in exchange for
4 the ownership interest.

5 So all this side show about Ms. Kalayjian -- of
6 plaintiffs emphasizing Ms. Kalayjian's mistake, which they, for
7 some reason, spent three pages addressing, while not addressing
8 the actual consideration argument that we were making, it is a
9 side show.

10 The reason we included it, your Honor, was not to
11 distract, but to simply convey to the Court that this was the
12 intention all along, and the formalization of that longstanding
13 intention, i.e., to make Rosey the principal stakeholder in OGR
14 and make Rosey the principal member or individual operating
15 Valbella At The Park, the subsequent amendments to the
16 agreements were done to effectuate and honor that longstanding
17 commitment. That was our purpose of just emphasizing the
18 mistake, but we then proceeded to address the
19 lack-of-consideration argument that plaintiff was making for
20 the transfer, and we did that by offering evidence. We offered
21 bank statements supporting the transfers in the operating
22 agreement, and they have not responded to it.

23 THE COURT: Let's walk through that. Looking at page
24 21 of your opposition brief, where you describe this transfer,
25 you describe a consideration in three parts. What I'd like to

1 do is to walk through each of those, if we can.

2 The first thing that you mentioned is the \$600,000
3 payment from the Kalayjian Patriot account.

4 Can I just ask for you, counsel for Ms. Kalayjian, to
5 just summarize what you understand the evidence to be regarding
6 the source of the funds in the Patriot account, and then also
7 to whom that payment was made.

8 MR. SHIFRIN: Your Honor, I don't know that we have a
9 position or if there is evidence that dispositively resolves
10 the principal source or the original source of that money, and
11 there is no argument from plaintiff to that effect either. All
12 we know is that Rosey Kalayjian had a bank account, her own
13 individual bank account, and she transferred \$600,000 from that
14 account.

15 And the second part of your question was who received
16 it?

17 THE COURT: Yes.

18 MR. SHIFRIN: That money went into the OGR operating
19 account. It was used to pay for the capital contributions of
20 OGR.

21 THE COURT: Thank you.

22 Understood.

23 Let's talk about the second piece of consideration
24 that's described here, which is \$1.3 million from the joint
25 account. What's your response to each of those same questions

1 with respect to this payment?

2 MR. SHIFRIN: So you're talking about, your Honor, the
3 balance of the payments for the OGR interest?

4 THE COURT: Yes.

5 MR. SHIFRIN: That came from the joint account, which,
6 again, half of which belongs to Rosey, but was clearly done
7 with David Ghatanfard's consent to provide that money in
8 exchange for her interest, which joint account holders are 100
9 percent entitled to do. Again, that's in the cases that we
10 cite, *In Re Leff* specifically. So the source of that money was
11 the couple's joint account and the money went, just as I said
12 before, your Honor, to OGR for purposes of funding the capital
13 contributions to OGR and VATP.

14 THE COURT: Thank you.

15 Did the OGR shares have any value prior to these
16 contributions?

17 MR. SHIFRIN: Yes. Why wouldn't they, your Honor.
18 Yes, they absolutely did. I don't mean to ask the Court a
19 question, but of course they did. They were interests in a
20 soon-to-be very profitable restaurant that is operating right
21 now on the corner of Sixth Avenue and Bryant Park.

22 THE COURT: Thank you.

23 You appreciate the issue. If those payments were made
24 to pay into a capital contribution for operating or other
25 expenses of the business and the shares had value previously as

1 equity in this successful business, then these payments did not
2 reflect arguably the preexisting value of those shares.
3 Instead, they were used to fund the operating accounts, as you
4 just described.

5 So let me put it differently. If you have a
6 successful business and it's worth \$100,000, you put in \$50,000
7 of capital contributions, you would expect that your equity
8 would then be one-third of the value of the company. That's
9 because \$100,000 is the value before the equity contributions,
10 50 is the amount of the equity contributions. 50 over 150 is
11 one-third.

12 Here, you have said that the value of the company was
13 X, something substantially greater than zero, and she got 90
14 percent of the equity interest in that company as a result of
15 the 1.9 million plus category 3.

16 The question is, as counsel for plaintiff articulated,
17 why is this reasonably equivalent value?

18 MR. SHIFRIN: Your Honor, I admit that was challenging
19 for me to follow from beginning --

20 THE COURT: Let me do it again.

21 MR. GORDON: Your Honor, is it OK if I respond to
22 that? Because I think I can clarify it.

23 THE COURT: Thank you. If you'd like.

24 MR. GORDON: The 1.9 million did come from the joint
25 account. Those payments all came from various prior

1 restaurants: Valbella Midtown, Valbella Meatpacking, One If By
2 Land, restaurants into which Rosey poured herself. She got
3 little to no money as compensation.

4 THE COURT: Thank you.

5 Let me just pause you. I appreciate that. You're
6 focused on the source of the contribution.

7 MR. GORDON: Then the monies were used to make OGR as
8 the 50 percent comanaging member of VATP, Valbella At The Park.
9 The 1.9 million was made as a capital contribution before the
10 business even began, as the, I guess, starting capital. Rosey
11 put in 1--

12 THE COURT: Thank you. I'm sorry. I appreciate it.

13 The prior response was that the equity interest had
14 value prior to the capital contribution. I understand that
15 your proffer now is that that's basically the starter capital.
16 So the value of the equity is the 1.9, plus category 3.

17 MR. GORDON: That is correct.

18 THE COURT: I appreciate it. Please proceed.

19 MR. SHIFRIN: Your Honor, are there any other
20 questions with respect to the OGR transfer interests
21 specifically?

22 THE COURT: Only to the extent that you can help me
23 trace the source of the \$1.3 million that was held in the joint
24 account. Can you comment on that.

25 MR. SHIFRIN: Where did that money come from? How was

1 it deposited into the joint account to begin with?

2 THE COURT: Yes.

3 MR. SHIFRIN: Your Honor, frankly, I don't think that
4 I am prepared to say where it came from other than that it was
5 income from both Mr. Ghatanfard -- it was the result of their
6 commingling of assets over many years and it's hard to unwind
7 that, unpack that. Obviously that included deposits of income
8 from David's other restaurants. That included perhaps other
9 deposits of income that Ms. Kalayjian had. It was a commingled
10 joint account where money was deposited from different sources,
11 presumably, so it's hard to say where that specific money came
12 from, but presumably a fair chunk of it came from Mr.
13 Ghatanfard's capital ownership interest in other restaurants.

14 THE COURT: Thank you.

15 Anything else, counsel for Ms. Kalayjian?

16 MR. SHIFRIN: There are certain other transfers here,
17 your Honor. I don't want do belabor and repeat what we say in
18 our papers, but just to emphasize a bit more what Mr. Gordon
19 just said, these transfers to Ms. Kalayjian -- putting aside
20 the OGR transfer, which we just discussed, the money that was
21 transferred to Ms. Kalayjian was to discharge antecedent debts
22 that she was owed for years of contributions to all the
23 restaurants that Mr. Ghatanfard owned, sometimes as a phantom
24 owner, but nevertheless owned, and Ms. Kalayjian consistently
25 contributed her efforts well beyond whatever nominal

1 compensation that she was paid.

2 This is an important distinction, your Honor, again,
3 from the Connecticut case where spouses who have no argument
4 and no involvement in any of the money that the debtor
5 transfers to them through a joint account. This is
6 considerably different. This is compensation for prior
7 services in the form of a discharge of an antecedent debt.

8 This is exactly how they did it, your Honor, again,
9 just to reemphasize, with respect to the TuttaBella sale in
10 January of 2016. The transfers of income, the sale of One If
11 By Land specifically, your Honor, which was another restaurant.
12 This is something I should probably emphasize more. The One If
13 By Land specifically, your Honor, was exactly analogous to
14 TuttaBella.

15 So TuttaBella, in 2010, Ms. Kalayjian came in, took
16 over that restaurant, made it profitable with zero help from
17 Mr. Ghatanfard. In 2016, January 2016, Mr. Ghatanfard sold the
18 business and said, here you go, you earn this. Based on your
19 efforts, you are entitled to keep this. The exact same thing
20 happened with One If By Land. Ms. Kalayjian ran that
21 restaurant without Mr. Ghatanfard's contributions at all. He
22 was the phantom owner. Then when he sold that restaurant, he
23 transferred, just like he did with TuttaBella, the proceeds of
24 that sale to Ms. Kalayjian in discharge of the antecedent debt
25 that Mr. Ghatanfard owed Ms. Kalayjian.

1 Your Honor, again, I can go into the details. Our
2 briefs go into it. But context is king here. No matter what
3 statute we are talking about, whether it's 273(a), 273(a)(1),
4 273(a)(2), or 274, under the New York Debtor Creditor Law,
5 context matters. These are fraudulent transfer statutes or
6 constructive fraudulent transfer statutes, and the purpose is
7 to ascertain whether there are other explanations for these
8 transfers.

9 I think we have provided the Court an extensive record
10 that demonstrates there are other reasons for these transfers,
11 reasons that preexist the lawsuit, reasons, of course, that
12 existed after the lawsuit. But people have to live their
13 lives, whether they are sued or not, and they don't have to
14 change what they do and how they do it and how they do business
15 just because they have been sued. As we say in our papers,
16 your Honor, a lawsuit does not turn the ordinary into the
17 suspect in and of itself. We have to consider the context
18 here.

19 Plaintiffs' submissions have not done that. That's
20 the key thing. They have a burden on a motion for an order of
21 attachment to consider the context. They have just ignored it
22 all together. I don't think I'm overstating it. They really
23 have.

24 All they are focusing on is the transfers in a very,
25 very narrow vacuum. They are ignoring all the evidence that

1 Ms. Kalayjian submitted. They are saying it's not to be
2 believed on the basis of deposition testimony in another case
3 with separate irrelevant issues. I don't think that's fair to
4 Rosey. Rosey has rights and those rights should be vindicated
5 and protected.

6 Thank you.

7 THE COURT: Thank you.

8 MR. GORDON: Your Honor, with respect to the context,
9 also, as your Honor knows, Mr. Ghatanfard is critically ill.
10 He was aware of his cancer diagnosis at least a year or two
11 ago, but it metastasized most recently.

12 But at the time that he first became aware of his
13 cancer diagnosis, he began, in effect, estate planning. He
14 even testified to that during his deposition. I am not going
15 to be around forever and I'd like to provide for her. That is
16 an additional context. He's 20 years older than she is, and he
17 wanted to make -- ensure that she had monies for when he was no
18 longer with her.

19 THE COURT: Thank you.

20 Counsel for plaintiff, any response?

21 MR. KIRSCHENBAUM: Your Honor, I am going to start
22 with a couple of responses to the points that defendants make
23 and then, if it's OK with your Honor, just make a couple of
24 points with respect to each transfer.

25 First of all, just in order of some of the points that

1 defendants made, with respect to Ms. Kalayjian having been
2 deposed in another matter, first of all, she testified under
3 oath. I think what happens, especially the starkness and
4 contradictions between her testimony at her deposition and what
5 she submitted to the Court in this motion indicates that, yes,
6 she testified what she could remember. We are talking about a
7 transfer of 4 plus million dollars in assets. She remembered
8 very little about them, and then now has a totally full-blown
9 fantastical story about each of the transfers. That's point
10 one. Her deposition testimony should absolutely be considered
11 to show that she is not testifying truthfully now.

12 Secondly, with respect to joint tenancy law, I am not
13 sure if defendants simply don't understand what joint tenancy
14 law is about or if they are just misapplying it. There is no
15 question that while the money is in a joint bank account, both
16 parties are in possession.

17 But the relevant point for our purposes is that the
18 money is entirely leviable, and there is a ton of law
19 supporting that which we have cited in our brief. The point of
20 the case in Connecticut, which has almost an identical -- which
21 is dealing with a statute that is an almost identical
22 definition of what a transfer means for the purpose of being a
23 voidable transfer is that when something goes from being
24 leviable to being unleviable, that is the fraudulent transfer
25 and that should be voidable.

1 THE COURT: Can I just pause you on that. I
2 apologize. I saw that in your brief.

3 In the circuit's decision, I think as fairly
4 represented in your brief, they focus on, as you say in your
5 brief, the transfer out of the joint account.

6 What is your position regarding whether or not the
7 gift into the joint account is itself a transfer?

8 MR. KIRSCHENBAUM: Two things.

9 First of all, I don't know that the answer to that
10 question is necessarily dispositive of the current motion. I
11 think at a turnover proceeding once the money -- the transfer
12 is voided, at a transfer -- at a turnover proceeding
13 Ms. Kalayjian could then somehow try and make an argument that
14 the joint tenancy is not really joint tenancy. That's why I'm
15 confused by the argument she is making. If it were in fact a
16 joint tenancy, then again the law is clear, and we have cited a
17 ton of law on this, that all of the money is collectible.
18 There are state court decisions from virtually every
19 department.

20 She can rebut the presumption, but then what I believe
21 that her counsel is misapplying here is that then she would
22 actually be having to make the opposite argument and be saying
23 that this arrangement was an arrangement for convenience and
24 really all of the money was my, Rosey Kalayjian's money, not
25 Mr. Ghatanfard's money. Absent being able to prove that, I

1 think that if the money were in the joint account, we would be
2 able to not only levy all of it, but we would also be able to
3 turn it over in a turnover proceeding.

4 THE COURT: Thank you.

5 MR. KIRSCHENBAUM: Does that answer --

6 THE COURT: Yes. You can proceed.

7 MR. KIRSCHENBAUM: And I should point out that if we
8 would not be able to get that money in the joint account, then
9 the very entry of the money -- of Mr. Ghatanfard's money into
10 the joint account would be a voidable transaction, because a
11 judgment debtor cannot simply purify half of their assets by
12 putting it -- putting them into your joint account, no matter
13 how they lived their life with a spouse. These laws were
14 intended to protect creditors, not to give -- the point of the
15 banking law Section 675 was not to give any spouse the
16 opportunity to sort of protect half their money from
17 collection.

18 Moving to the consideration of Oak Grove Road, it is
19 not the case that we are resting our argument completely on the
20 recitation of a \$10 consideration. The standard here is
21 reasonably equivalent value. Defendants have provided not a
22 shred of evidence as to what the source of the funds were. In
23 fact, just a simple inference from following the transactions
24 that took place, it's a very easy inference that the money that
25 funded -- the money that funded the so-called consideration for

1 the transfer of Oak Grove Road is exactly the money that we
2 were saying either belonged to Mr. Ghatanfard in the first
3 place or was inappropriately transferred to Ms. Kalayjian.

4 THE COURT: Thank you. Let me just ask you to pause
5 on that, counsel.

6 You have a view regarding the question that I posed to
7 counsel for Ms. Kalayjian, which is, what's your view regarding
8 tracing the source of the 1.3 million and \$600,000 payments?
9 What's the evidence that you point to to support the position
10 that the likely source of those funds were the assets for Mr.
11 Ghatanfard that you seek to attach?

12 MR. KIRSCHENBAUM: First of all, the timing of the
13 transfers that went from the joint account out -- out of the
14 joint account to Ms. Kalayjian and then within two years they
15 all come back, that's A. B is, the ones that came from the
16 joint account, I don't know how important is the source. The
17 sourcing is, on its face, money that belonged to the two of
18 them, absent any showing that Ms. Kalayjian either won the
19 lottery or inherited a ton of money or just had her own money
20 to pay for it. I think really the burden falls on her at that
21 point.

22 Another point is that, as your Honor touched upon,
23 there is absolutely no recitation of value that the company has
24 been valued at this amount and, therefore, I am paying this
25 amount in exchange for that, and that is their burden to prove

1 here. They have got to prove there was reasonably equivalent
2 value.

3 More importantly, there was no -- one would think that
4 if somebody was buying back a company for 1.9 million or buying
5 into a company for 1.9 million, there would be some record of,
6 I am paying this money with an expectation that this will be
7 transferred to me, but, instead, the entire record is created
8 backward looking after the jury verdict or right around the
9 time of the jury verdict and the judgment, when OGR is
10 transferred. Then there is this entire backwards-looking
11 recitation of the events to make it look as though it was in
12 exchange for transfers of money.

13 Since we are starting with OGR, I'll point out a
14 couple of other points with respect to OGR that I think are
15 relevant. Ms. Kalayjian's testimony was all over the place.
16 She testified at her deposition that 90 percent -- that the
17 entire OGR was hers from the beginning. Then she testified
18 that there was -- when confronted with a recitation in the
19 agreement, that there was a prior 66 percent transfer. She
20 said -- the questioner asks: Do you recall Mr. Ghatanfard ever
21 agreeing to transfer you 60 percent of Oak Grove Road? And she
22 responded: No. It is supposed to be 90 because that's what I
23 am, 90. He was 10. Yet in her own declaration, in paragraph
24 37, she testifies that in fact the 66 percent transfer is
25 exactly what happened. She made an initial transfer for 66

1 percent and then got an additional percent as compensation for
2 her contemplated director of operations role. Her own story
3 contradicts itself right on its face, which calls into question
4 any representations she is now making about what the
5 consideration was.

6 I think we have touched on most of the points other
7 than one other crucial point, is that Mr. Ghatanfard himself
8 doesn't remember that there was ever an operating agreement or
9 and that he ever transferred any money from Oak Grove Road, and
10 Mr. Ghatanfard's position on this is possibly the most
11 important. He is the transferor. He is the one whose assets
12 we are assessing were fraudulently transferred.

13 In reality, there is an operating agreement. The
14 operating agreement was executed in May of 2021. In the
15 operating agreement Mr. Ghatanfard is appointed at that time
16 manager of the company. Mr. Ghatanfard signed the lease for
17 the place. The story that defendants --

18 THE COURT: Can I just ask about that. When did OGR
19 begin operations relative to the timing for the alleged
20 payments by Ms. Kalayjian?

21 MR. KIRSCHENBAUM: OGR began operation in or about May
22 of 2021 -- February of 2021. The transfers are stated -- you
23 got February 2021. There is a \$500,000 transfer by the two of
24 them. April 2021, \$600,000 by Rosey herself. July from the
25 joint account. September from the joint account. February

1 2022 from the joint account. So it's over the course of that
2 year.

3 THE COURT: Thank you.

4 You take issue with Ms. Kalayjian's counsel's proffer
5 that the contributions happened as startup capital before there
6 was an operating business with any independent value?

7 MR. KIRSCHENBAUM: I'm sorry.

8 THE COURT: You take issue with counsel for
9 Ms. Kalayjian's proffer that the contributions were made as
10 startup counsel before the business had any independent value?

11 MR. KIRSCHENBAUM: It's a little bit of a term of art.
12 I don't think it was evaluated by a third party. I think they
13 probably pumped money into the company on an as-needed basis,
14 but the shares certainly had value. If Ms. Kalayjian is
15 testifying that she was exchanging money for value, there is
16 absolutely no record of that or indication of that.

17 THE COURT: They had a leasehold interest before some
18 of these payments were made?

19 MR. KIRSCHENBAUM: They did. They had a leasehold, I
20 believe, in --

21 THE COURT: Did the company have other physical assets
22 before any of these payments were made?

23 MR. KIRSCHENBAUM: They had all the goodwill of moving
24 the operation from midtown to downtown. They had an ongoing
25 agreement with the other partners in Valbella At The Park to

1 move forward and to open the restaurant and certain commitments
2 that are all recited in the operating agreement dated before
3 then. Sure, they had an entire business plan underway at that
4 point.

5 THE COURT: Thank you. Please proceed.

6 MR. KIRSCHENBAUM: Moving to the proceeds of
7 Canterbury -- I do want to make one more point. With respect
8 to TuttaBella -- and this is by way of introduction to the rest
9 of these transfers. Yes. He may have lived his life that way
10 in 2016 and moved \$600,000 to her. But as defendants say -- as
11 the Kalayjian party says, the important point here is context.
12 Over here -- over there they could do whatever they want. Over
13 here there are creditors, and there is an entire slew of
14 transactions and a period of two years that we see clearly have
15 stripped Mr. Ghatanfard of his assets completely. He has
16 testified he has got nothing. The purpose of the series of
17 transactions is incredibly clear.

18 The Canterbury transfer, September 2020, 1.23 million,
19 all went to Rosey's account. They talk about a longtime
20 understanding about how they would apportion the assets. That
21 is the epitome of unfalsifiable testimony. There is not a
22 shred -- there is not a shred of evidence. Many people own
23 homes with their lives, with their spouses, with their life
24 mate, with their partners. They set something up in order to
25 do that.

1 Here, there is nothing. There is no statement that I
2 am giving you \$1.23 million because I owe it to you or why I am
3 giving it to you. There is totally not a shred of evidence
4 that what the value of her work was or that the transfer was
5 made in consideration for that value. All there is is that
6 this lucky end result is all the money I transferred to you
7 equals about all the money that I think we should value -- we
8 should value your work at.

9 One more crucial point is that Mr. Ghatanfard himself,
10 after repeated questioning, could not even remember what he did
11 with the money. He thought he may have sent it to family in
12 Iran. It was only after several rounds of questioning that
13 Mr. Nussbaum asked him, suggested, maybe you gave the money to
14 Rosey, that he acknowledged that that might be a possibility.
15 Those are -- that is hardly the indicia of someone who owed his
16 life partner all of his assets and was now diagnosed with
17 cancer and is trying to set up his estate so that she could
18 have all his money. He could not even acknowledge that he gave
19 her the money, to be clear, let alone why he gave her the
20 money.

21 With respect to the Southampton property, in January,
22 1.4 goes to Rosey. In May, the house is deeded to them
23 jointly. They say that it was the result again of a joint
24 understanding between the parties, of work that she did, of
25 mortgage payments that she made, which it should be noted that

1 she didn't start making mortgage payments until after the house
2 was deeded to her in May of 2022, not a shred of evidence that
3 that was the purpose of the money.

4 At her deposition it is not clear that she even knew
5 that the refinance happened. She testified in her declaration
6 to the Court that because of favorable mortgage rates, her and
7 Mr. Ghatanfard decided to refinance. At her deposition it was
8 not clear to her that it had even been refinanced, and she
9 testified that when she saw a new bank, when she saw a new
10 bank's mail coming in the mail, she thought that maybe the
11 reason that was happening was because a new bank had purchased
12 the mortgage from her own bank. That's hardly the way someone
13 would testify if, again, her life mate was suffering from
14 cancer and transferred to her \$1.4 million because he was
15 trying to settle on his estate.

16 Next question. She lived in the house all this time.
17 She did improvements. She is saying that this is how they
18 lived their life as a couple. They share the house. Why would
19 she have a \$1.4 million debt or what they want to call a
20 \$700,000 debt for fixing the very house in which she is lives.
21 The reality is, Mr. Ghatanfard makes a lot of money, she lived
22 with him, and she chose to do this work on the house.

23 There was absolutely no resolution that she was owed
24 any money or that giving her this property, this very
25 significant amount of property, was in payment for that money.

1 Same thing goes for Valbella Midtown.

2 One thing to point out for Valbella Midtown and One If
3 By Land is, there is not a shred of income reported. She is
4 now telling us that this was payment to her for all her work.
5 Does she report any income that she got from the sale of
6 Valbella? Does she report any income that she got from the
7 sale of One If By Land? Absolutely not. She does not. Why?
8 Because it was not -- because it was not income. It was an
9 illegal transfer.

10 Besides for all of these points, which mostly revolve
11 around reasonably equivalent value, it's crucial to take into
12 account, with respect to at least 273(a)(1), the other factors
13 that are indicia of fraud.

14 THE COURT: Thank you. I think I have heard enough
15 for now.

16 Let me turn to counsel for Ms. Kalayjian just with a
17 couple of brief questions, if I can.

18 First off, you have heard counsel for plaintiff make
19 the assertion that the entirety of a joint account may be
20 seized by a judgment creditor; in other words, that by
21 transferring money to a joint account, a debtor does not
22 protect half of the value of the assets. They point to the
23 circuit's decision that they have identified in their brief.
24 There are New York State appellate division cases that support
25 that conclusion.

1 What's your view? Is it your view that the law
2 supports the argument that once funds are placed in a joint
3 bank account by a judgment debtor, the entirety of the funds in
4 the joint account may not be seized, but rather that only 50
5 percent may be seized. Perhaps I made that too complicated.
6 If a judgment debtor has a joint account, is it not the case
7 that a hundred percent of the funds in the joint account can
8 presumptively be seized by the judgment debtors' creditors?

9 MR. SHIFRIN: We don't dispute that, your Honor. That
10 is the law. The cases we cite said as much, but it's not just
11 the issue.

12 The issue is, can they go after that money once the
13 joint account holder exercises their right to alienate their
14 own one-half interest, which they have, and we have cited cases
15 and language that specifically say this. Can they go after
16 that money once it's out of the joint account. The answer to
17 that, I think, is no, absent, of course, some kind of fraud.
18 But that's not what we are dealing with here. We are dealing
19 with her interests in a house that they shared, in income that
20 she earned, etc.

21 THE COURT: Thank you. Let me pause you.

22 In your briefing -- I'm looking to page 24 of your
23 opposition. You argue that plaintiffs cannot rely on the UVTa,
24 which implicates David's intent to discharge their heightened
25 burden of proving Rosey's intent to attach her assets.

1 Can you expand on that. What's your view? I'll give
2 you a hypothetical that's a little simpler. A judgment
3 creditor concededly fraudulently provides to his daughter
4 money. She has no idea that the father is doing that as a
5 matter of fraud. Are you saying that the statute does not
6 permit a judge debtor to seize the assets from the daughter
7 because the daughter does not have fraudulent intent?

8 MR. SHIFRIN: Your Honor, I think the point that we
9 were trying to make at that part of the brief is simply that
10 the operative inquiry is the judgment debtor's intent. That's
11 the simple point that we are making, and it seemed in
12 plaintiffs' briefing that they were focused a lot on Rosey's
13 intent.

14 THE COURT: Thank you. Good. Understood.

15 One other brief question, counsel.

16 Again, looking to your opposition at page 23, one of
17 the factors is, of course, whether or not this is based on a
18 judgment of a court of the United States. In your brief it
19 appears that you are arguing that this precondition is not
20 satisfied because the person whose assets are sought to be
21 attached is not themselves -- is not herself the judge debtor.

22 Can you expand on that argument if I'm interpreting it
23 properly.

24 MR. SHIFRIN: I think you said it perfectly, your
25 Honor. I don't think they have cited any cases to suggest

1 otherwise. I am not sure there are cases that suggest
2 otherwise. We are not aware of any. But under that specific
3 provision, under that specific justification for an order of
4 attachment, it seems a stretch to extend it here in this way,
5 in the way that you just stated, your Honor.

6 THE COURT: Thank you.

7 Is there a textual basis for that construction of the
8 statute? In other words, where it says, based on a judgment of
9 a court of the United States, that it should be read to mean,
10 based on a judgment against the person whose assets are sought
11 to be seized of a court of the United States.

12 Where does that restriction reside in either the text
13 or the case law?

14 MR. SHIFRIN: It was based on our evaluation of the
15 case law and us not being able to find a single instance where
16 it was applied in this matter against a nonjudgment debtor.

17 I understand that the language says what it says and
18 you can give it a broad gloss or a narrow gloss, but the
19 plaintiffs, whose burden it is to obtain an attachment, an
20 order of attachment, have not pointed to any cases where this
21 has been applied to a judgment debtor's spouse.

22 THE COURT: Can I just pause on that. Your proffer to
23 the Court is that there are no cases in which a third-party's
24 assets have been attached in support of a judgment against a
25 judgment debtor?

1 MR. SHIFRIN: No. I want to be careful not to
2 overstate it. We have not found -- plaintiffs did not cite a
3 case and our review of the cases did not find a case, did not
4 result in a case where this provision was specifically asserted
5 as a basis to go after a nonjudgment debtor's assets. It's a
6 narrow point, your Honor, and I'm very careful not to overstate
7 for fear of not knowing what might be in the U.S. reports, but
8 that's my understanding of the case law. Again, plaintiffs
9 have pointed to no case stating the contrary.

10 THE COURT: Thank you.

11 MR. GORDON: Your Honor, may I just close a loop. I
12 wanted to close a loop on the OGR question that you had asked,
13 which is that OGR was formed in February of 2021, and
14 thereafter OGR and Alpine Pike Investments entered into an LLC
15 agreement for Valbella At The Park. Each of Oak Grove Road LLC
16 and Alpine Pike Investments LLC are 50 percent managing members
17 of Valbella At The Park. Each of OGR, through Rosey, and
18 Alpine Pike Investments through a gentleman named Robert Daleo,
19 invested 1.9 million into Valbella At The Park as starting
20 capital. At the time of that investment, there was no value.
21 It was startup capital.

22 Mr. Kirschenbaum made reference to goodwill. Our
23 position is this restaurant was an entirely new entity and a
24 completely different concept from Valbella Midtown, and this
25 was just starting capital to get the restaurant off the ground.

1 THE COURT: Thank you. Good. That's helpful.

2 I just have one brief question I think before I'd like
3 to take a short recess. That pertains to the underlying issue
4 here. The request for attachment of assets is, I'll call it, a
5 request for the Court to protect the prospect of a decision
6 supporting the plaintiffs' claim that these are fraudulently
7 transferred assets. That's an issue that we are not ultimately
8 deciding here. Instead, I'm determining whether or not the
9 provisional relief that the plaintiffs have sought is
10 appropriate here.

11 What I'd like to do is just to hear from each of you
12 about your view regarding the process for plaintiffs' turnover
13 proceedings eventually. As you know, the CPLR provides a
14 judgment creditor to bring a special proceeding against someone
15 with money or other personal property the judgment debtor has
16 interest in. A special proceeding is not a proceeding that's
17 recognized with those words under the Federal Rules of Civil
18 Procedure. As you know, Rule 2 only provides for a single form
19 of action.

20 What I'd like to do is just to hear what the parties
21 expect the process to be for the Court to ultimately resolve
22 the question of the turnover motion. Here, plaintiffs have
23 suggested that it's essentially a summary judgment motion in
24 that I can grant relief when there are no material questions of
25 fact, but, as I understand it, there are some disputed issues

1 of fact presented by Ms. Kalayjian through her counsel.

2 Let me hear from you about how you anticipate that
3 these issues will ultimately be resolved. I'm particularly
4 interested in your views as to whether or not this is an issue
5 that will be tried to the Court or if it is something that
6 requires a jury as the finder of fact. These are
7 considerations that I want to think about as we are thinking
8 about the propriety of the provisional relief requested here.

9 Let me turn first to counsel for plaintiffs.

10 Counsel, what's your thinking on this procedural
11 question?

12 MR. BUZZARD: I think the Court summarized exactly the
13 procedural posture. I think that to initiate this turnover
14 proceeding, we would file a motion like a summary judgment
15 motion. If there were disputed issues of fact that are
16 material -- and, again, I am not sure that any of the factual
17 issues that have been identified here are necessarily
18 material -- then there would have to be a trial. As to whether
19 this trial would be jury or bench, I would have to -- I would
20 have to honestly look into that a little bit more. I believe
21 it would be -- I think I would have to look into that a little
22 bit more. My sense tells me that it may be a bench trial
23 issue.

24 THE COURT: Thank you. That's fine.

25 I appreciate the request for additional time to think

1 about the issue. It is an important one for us to resolve
2 going forward, but we don't need to resolve it here.

3 Counsel for Ms. Kalayjian, do you have a view on those
4 questions?

5 MR. SHIFRIN: I think I ultimately agree with
6 Mr. Buzzard that we probably all want to think about it some
7 more, but I think it's important to point out that there is no
8 turnover application that has been brought here, so this is
9 somewhat, I think, at the moment academic.

10 The other point I want to make, your Honor, is that
11 this motion for an order of attachment is preliminary relief,
12 as this Court is well aware, as plaintiffs, I'm sure, won't
13 dispute. But once there is another application, there needs to
14 be additional briefing, perhaps a trial, additional evidence,
15 additional record developing. So we are operating from a
16 preliminary record here. And I think that's just worth
17 emphasizing, that there may be more facts that come to light
18 that are relevant to the ultimate disposition of plaintiffs
19 yet-to-be-filed turnover application.

20 THE COURT: Good. Thank you.

21 Counsel for plaintiffs, anything else on that point?

22 MR. BUZZARD: Just very quickly, your Honor.

23 One of the forms of relief we are seeking in
24 connection with the attachment is discovery in aid of
25 attachment. That necessarily will encompass some discovery in

1 aid of execution. We need to know if the Court grants
2 attachment. And if we are to move to turn over funds held by
3 Ms. Kalayjian, we need to know, first, where those funds are,
4 which we have not been able to do. That is why we have not
5 brought a formal turnover as of yet. We do not know where the
6 funds are, and we need those funds in order to have them turned
7 over.

8 I think, based on what Mr. Shifrin just said, both
9 parties agree that there should be discovery if attachment is
10 granted.

11 MR. GORDON: Your Honor, with respect to the
12 discovery, plaintiffs' counsel, the same counsel who represents
13 Mr. Zivkovic in the 2022 action before Judge Subramanian that
14 previously was before your Honor, between that action and this
15 action they have served countless discovery demands to which we
16 have responded. We have produced, I think at this juncture, in
17 excess of 45,000 pages of discovery. We have answered
18 information subpoenas on behalf of Ms. Kalayjian, on behalf of
19 OGR, on behalf of VATP. They have asked every conceivable
20 question not only twice, sometimes three times, so I cannot
21 imagine what additional discovery plaintiffs need that they
22 have not already sought and obtained.

23 THE COURT: Thank you.

24 MR. KIRSCHENBAUM: Your Honor, can I respond to that
25 briefly?

1 THE COURT: Yes.

2 MR. KIRSCHENBAUM: The discovery we need is, where is
3 the money? Where is Ms. Kalayjian's money? Defendants two
4 minutes ago, in addition to that, just said that the record may
5 more fully develop before a turnover proceeding. Certainly if
6 there is something we don't know that defendants are going to
7 use to defend themselves, then obviously that's something we
8 need to know if we did take their depositions. We are ready to
9 put them on the stand. But, A, if Ms. Kalayjian is going to
10 come up with yet a new argument, I think we need to know what
11 that is and, B, if we are going to execute on her assets, we
12 need to know what her assets are.

13 THE COURT: Counsel, thank you much for your
14 arguments. I am going to step down. I expect that I am going
15 to step down for a relatively extended period of time to
16 contemplate your arguments. It's about 11:20 now. My proposal
17 would be that we, by default, reconvene at 11:45. My deputy
18 will let you know if we need additional time. I will step down
19 now. Please, unless you hear more from Ms. Joseph, be prepared
20 to start again at that time. Thank you all very much.

21 (Recess)

22 THE COURT: Counsel, thank you very much for your
23 indulgence. We are back on the record after an extended
24 recess, about 50 minutes long.

25 Let me just say that I appreciate the parties'

1 arguments and your respective briefing. I think that I'm in a
2 position now to resolve the application. With your indulgence,
3 I am going to do that now.

4 I am going to begin with an introduction.

5 I. INTRODUCTION.

6 I scheduled this conference to discuss Plaintiffs'
7 June 29, 2023 motion for an order of attachment against the
8 assets and property transferred from Defendant David Ghatanfard
9 to non-party Rosey Kalayjian. Dkt. No. 420-34.

10 The defendants in this action are Laura Christy LLC
11 (doing business as "Valbella"), Laura Christy Midtown LLC (or
12 "Valbella Midtown"), David Ghatanfard, and Genco Luca. See
13 Dkt. No. 424 (partial judgment). The plaintiffs in this case
14 are Mr. Pavle Zivkovic and a class of plaintiffs who are
15 similarly situated. See *id.* For the purposes of today's
16 conference, when I refer to "Plaintiff" in the singular, I am
17 referring to Mr. Zivkovic. When I refer to "Defendants," I am
18 referring to the defendants I just listed, except Mr. Luca, who
19 is not relevant to Plaintiffs' motion.

20 I have reviewed the extensive briefing and
21 accompanying factual evidence to assess Plaintiffs'
22 application. Because Mr. Ghatanfard transferred virtually all
23 of his assets to Ms. Kalayjian's personal account with the
24 threat of a multi-million dollar judgment hanging over his
25 head, I am going to grant Plaintiffs' motion and issue an order

1 of attachment on Ms. Kalayjian's assets.

2 II. BACKGROUND.

3 I assume all the litigants here today are familiar
4 with the underlying basic facts and procedural history of this
5 six-year case, so I will not recite them here in full. Because
6 Ms. Kalayjian is not a party to the litigation and Plaintiffs'
7 motion involves a fairly tangled web of events, however, I will
8 highlight the facts, including the procedural history, that are
9 the most relevant to my decision.

10 These facts are not disputed and are drawn from the
11 supporting declarations to the briefing and what I've heard
12 today in court, unless otherwise noted.

13 First, I will go over a few events from this
14 litigation. This commenced on January 25, 2017. Dkt. No. 1.
15 Plaintiffs, as food-service employees at Defendants'
16 restaurants, asserted class claims of various wage-and-hour
17 violations and individual claims of discrimination on the basis
18 of national origin. Fact discovery, with some limitations,
19 closed in February 2018, and expert discovery closed in April
20 2018. Dkt. No. 62.

21 The COVID-19 pandemic interfered with the scheduling
22 of a trial in this matter, but, on November 10, 2021, I
23 scheduled trial to begin at the end of March. Dkt. No. 248.
24 A jury trial began on March 31, 2022, resulting in an April 11,
25 2022 jury verdict against Defendants. Dkt. No. 283. I entered

1 judgment against Defendants Valbella, Valbella Midtown, and Mr.
2 Ghatanfard on June 22, 2022. Dkt. No. 324.

3 After further motion practice and procedural history
4 that I don't think are particularly relevant here, I
5 subsequently entered partial judgment against the same
6 Defendants, jointly and severally, in the amount of
7 \$5,092,017.85. Dkt. No. 424. Plaintiffs have yet to recover
8 any of that amount. Accordingly, Plaintiffs have been pursuing
9 extensive enforcement proceedings, including by filing the
10 motion for attachment of Ms. Kalayjian's assets. Dkt. No.
11 420-34. Plaintiffs' theory is, in a nutshell, that Mr.
12 Ghatanfard has transferred substantially all of his assets to
13 Ms. Kalayjian to avoid paying the judgment.

14 This motion was accompanied by an *ex parte* motion for
15 a temporary restraining order, or a "TRO," which I granted on
16 July 5, 2023. Dkt. Nos. 420, 438. In doing so, I found in
17 part that Plaintiffs had demonstrated a likelihood of success
18 on pursuing turnover proceedings for those assets. Dkt. No.
19 438. The TRO permitted Ms. Kalayjian to maintain
20 "normal-course transactions for living expenses," not to exceed
21 \$10,000 per transfer. *Id.* At Ms. Kalayjian's request, I later
22 expanded the uses to which she could apply her assets without
23 prior leave of the court—including to pay tax obligations. I
24 also ordered Ms. Kalayjian to show cause why an order should
25 not be issued attaching her various assets connected with Mr.

1 Ghatanfard, as I will detail in a moment. *Id.* Plaintiffs and
2 Ms. Kalayjian have engaged in extensive briefing on this issue,
3 including in a supplemental round of briefing. Dkt. Nos. 420,
4 446, 470, 492, 497, 499, 504, 515. These were accompanied by
5 declarations and other supporting materials.

6 I note that Plaintiffs and Ms. Kalayjian have filed
7 other motions related to Plaintiffs' enforcement efforts,
8 including two motions to quash subpoena *duces tecum* served on
9 Ms. Kalayjian's banks and motions to hold Mr. Ghatanfard and
10 Oak Grove Road LLC in contempt. Dkt. Nos. 364, 405, 449, 461;
11 see also Dkt. No. 361 (order directing third-party Milton J.
12 Pirsos, CPA, to comply with Plaintiffs' subpoena). I will not
13 be addressing or resolving these motions today. I also note
14 that Plaintiff is separately pursuing litigation against
15 Valbella at the Park, LLC, to recover from it the judgment
16 against Valbella Midtown, which has now ceased its operations.
17 This is Zivkovic v. Valbella at the Park, case number
18 1:22-cv-7344.

19 Second, I will summarize the nature of Ms. Kalayjian's
20 personal relationship with Defendant Mr. Ghatanfard, including
21 the various transactions at issue in this motion.

22 Ms. Kalayjian and Mr. Ghatanfard are, in Ms.
23 Kalayjian's words, "longtime life and business partners who
24 have lived and worked together for approximately 20 years."
25 Dkt. No. 471 at 2. They met in 2004, when Ms. Kalayjian was

1 working in an unspecified position at a hedge fund and took on
2 a part-time job as a hostess at a restaurant owned by Mr.
3 Ghatanfard named Valbella Greenwich in Greenwich, Connecticut.
4 *Id.*

5 In 2008, Ms. Kalayjian took on another position, as a
6 part-time real estate agent, for the two of them to purchase a
7 house on Canterbury Road in Harrison, New York. *Id.* at 2-3;
8 Dkt. No. 471-1. I will refer to this house as the "Canterbury
9 House." Ms. Kalayjian represents that "David and I had an
10 understanding that the Canterbury House was a joint house into
11 which we both invested." Dkt. No. 471 at 3.

12 On June 28, 2011, the couple opened a joint account at
13 Patriot Bank (the "Joint Account") to "pool our assets and
14 provide a shared security." *Id.*; Dkt. No. 471-2. Over the
15 next decade, the couple made deposits into the Joint Account
16 and paid joint expenses out of it. Dkt. No. 471 at 3.
17 Separately, Ms. Kalayjian opened a separate individual market
18 account at Patriot Bank, which I will refer to as the Kalayjian
19 Account. Dkt. No. 420-5.

20 Starting in or around 2011, Ms. Kalayjian and Mr.
21 Ghatanfard repeatedly put the Canterbury House on the market
22 for sale. Dkt. No. 471 at 3; Exh. 4 (listed for sale in 2011,
23 2012, 2014, 2016, 2017 x2, 2020). The house was finally sold
24 on September 11, 2020 for a total sale price of \$1,237,762.50,
25 which was deposited into the Joint Account. Dkt. No. 420-8.

1 Over the next five days, \$1.25 million was transferred into the
2 Kalayjian Account. Dkt. No. 471 at 6; Dkt. No. 420-4 at 2.

3 Ms. Kalayjian and Mr. Ghatanfard's primary residence
4 then became a house on Oak Grove Road in Southampton, New York.
5 Dkt. No. 471 at 4. I will refer to this house as the
6 Southampton House. Ms. Kalayjian again asserts that she and
7 Mr. Ghatanfard "treated the Southampton House as a joint
8 asset," although Mr. Ghatanfard was the sole owner on paper, as
9 was the case with the Canterbury House. *Id.* Ms. Kalayjian
10 represents that she took the lead on managing and overseeing
11 significant repairs and renovations to the Southampton House.
12 *Id.* at 4; Dkt. Nos. 471-5 to -15.

13 Ms. Kalayjian took on the task of supervising the
14 contractors, making design choices for the renovations, and
15 working with the insurance company for reimbursements for
16 significant water damage that occurred at the Southampton
17 House. Dkt. No. 471 at 5; Dkt. No. 471-10. Ms. Kalayjian
18 asserts that if they had outsourced her work in picking out the
19 design elements of the renovations, they would have paid at
20 least \$150,000. Dkt. No. 471 at 5. She also asserts that
21 outsourcing the project management would have required
22 "substantial six-figure compensation." *Id.*

23 On January 3, 2022, Ms. Kalayjian and Mr. Ghatanfard
24 refinanced the Southampton House. Dkt. No. 471 at 5; Dkt. No.
25 420-16 and -17. On January 10, 2022, refinancing proceeds in

1 the amount of \$1,422,798.18 was deposited into the Joint
2 Account. Dkt. Nos. 420-17, 420-18. Two days later, Ms.
3 Kalayjian withdrew these funds, though it is not clear whether
4 this was deposited into the Kalayjian Account or a different
5 account. Dkt. No. 420-19 (showing back of cashier's check with
6 Ms. Kalayjian's endorsement and redacted account number ending
7 in -3510).

8 On or around March 25, 2022, about a week prior to the
9 commencement of the trial in this case, the title of the
10 Southampton House was changed from a sole ownership in Mr.
11 Ghatanfard's name into a joint tenancy with right of
12 survivorship between Ms. Kalayjian and Mr. Ghatanfard. Dkt.
13 No. 471 at 5-6; Dkt. No. 420-20. Ms. Kalayjian represents that
14 this was done out of concern for Mr. Ghatanfard's age and in
15 recognition of her contributions to the house. Dkt. No. 471 at
16 6; see also Dkt. No. 472-1 at 10-14 (Ghatanfard Deposition
17 Transcript). In July 2022, Ms. Kalayjian began to make
18 automatic monthly mortgage payments out of a separate
19 individual Citibank account, ending in -1520. Dkt. No. 420-2
20 at 20; Dkt. No. 420-21.

21 Finally, I will summarize the business relationship
22 and related transactions between Mr. Ghatanfard and Ms.
23 Kalayjian:

24 In 2005, Mr. Ghatanfard opened Valbella Meatpacking,
25 his first New York restaurant. Ms. Kalayjian represents that,

1 "[f]orsaking my career at a hedge fund to pour myself into my
2 budding business and personal relationship with David," she
3 began to work at Valbella Meatpacking. While her formal title
4 was "hostess" and other "entry-level positions," Ms. Kalayjian
5 represents that she did more substantial work and was a "core
6 member of the restaurant's management team." Dkt. No. 471 at
7 7; Dkt. No. 471-24.

8 In 2008, Ms. Kalayjian worked to significantly change
9 Valbella Steakhouse, another restaurant located in Eastchester,
10 New York, including by changing its name to "TuttaBella." Dkt.
11 No. 471 at 8; Dkt. No. 471-25. TuttaBella allegedly made
12 substantial profits for several years afterwards. Dkt. No. 471
13 at 8.

14 In 2011, Ms. Kalayjian helped Mr. Ghatanfard open up
15 another New York City restaurant named Valbella Midtown. Dkt.
16 No. 471 at 10.

17 In 2015, Mr. Ghatanfard became the owner of a
18 pre-existing restaurant named "One if by Land," and Ms.
19 Kalayjian again agreed to help, working as "essentially the
20 director of operations." Dkt. No. 471 at 8; *see also* Dkt. No.
21 471-26 to -34. In 2016, she put herself on the payroll for
22 \$600/week, which she represents was an underpayment for her
23 labor and was done "with the understanding that [she] would
24 eventually be repaid." Dkt. No. 471 at 9.

25 In January 2016, Mr. Ghatanfard sold TuttaBella and

1 deposited the proceeds of \$788,430 into the Joint Account.

2 This was then transferred to a different individual account

3 belonging to Ms. Kalayjian, ending in -0612. Dkt. No. 471 at

4 8; Dkt. No. 471-3 at 2.

5 In 2019, Ms. Kalayjian opened a new restaurant for Mr.

6 Ghatanfard called Bellasera in Larchmont, New York. Dkt. No.

7 471 at 10. She "did everything at Bellasera" but was not "paid

8 a dime." *Id.*; Dkt. No. 471-36 to -37. Mr. Ghatanfard "decided

9 to eliminate his stake" in Bellasera in 2020. Dkt. No. 471 at
10 10. I am not aware of any details provided as to how Mr.

11 Ghatanfard's interest was disposed of, much less what payment
12 he received and where it went.

13 From September 2020 to September 2021, Mr. Ghatanfard
14 deposited his distributions from Valbella Midtown for a total
15 of \$800,000 into the Joint Account. Dkt. No. 420-10. Within
16 days-often within 2 days-after each deposit, all or a majority
17 of each deposit was transferred to the Kalayjian Account, for a
18 total of \$675,000 out of the \$800,000. Dkt. No. 471 at 11;
19 Dkt. Nos. 420-4. Ms. Kalayjian asserts that she was entitled
20 to half of the \$800,000 by nature of the Joint Account being a
21 jointly shared account, and that the additional \$275,000 was
22 "compensation" for her work on Bellasera and the other
23 restaurants over the years. Dkt. No. 471 at 11.

24 Separately, Ms. Kalayjian decided to open a new
25 restaurant with Robert Daleo, but their plans were delayed due

1 to the COVID-19 pandemic. Dkt. No. 471 at 11-12. Finally, in
2 February 2021, Ms. Kalayjian allegedly formed an LLC called Oak
3 Grove Road, LLC (which I will refer to as "OGR") and handled
4 the Department of State filings herself without consulting an
5 attorney or accountant. *Id.* at 12. "As a result," she
6 asserts, the OGR Operating Agreement originally filed with the
7 New York Department of State "mistakenly reflect David as the
8 sole member, when in fact, [Ms. Kalayjian] held a majority
9 interest in the LLC." Dkt. No. 471 at 12; Dkt. No. 420-22 at
10 2, 3, 11.

11 In April 2021, OGR and another company now fully owned
12 by Mr. Daleo formed Valbella at the Park, LLC (which I will
13 refer to as "VATP"), to open a new "Valbella at the Park"
14 restaurant in the City. Dkt. No. 471 at 12. Ms. Kalayjian
15 asserts that she has been serving as VATP's Director of
16 Operations, while Mr. Daleo has been the one to negotiate the
17 lease for the restaurant and deal with its finances. *Id.* at
18 13. From February 2021 to February 2022, four payments from
19 the Joint Account totaling \$1.3 million and one payment of
20 \$600,000 from the Kalayjian Account were made as contributions
21 to OGR. Dkt. No. 471 at 12; Dkt. No. 420-23; Dkt. Nos. 471-38
22 to -42. Ms. Kalayjian alternatively asserts that she made
23 these payments, including those from the Joint Account, to be
24 "[c]onsistent with our longstanding aim of making me the
25 majority stakeholder of OGR," Dkt. No. 471 at 12, but also

1 argues that only half of the payments from the Joint Account is
2 from her, Dkt. No. 515 at 9, 13.

3 On November 17, 2021, Mr. Ghatanfard sold his stake in
4 the restaurant One if by Land, and the \$600,000 in proceeds was
5 deposited into the Joint Account. Dkt. Nos. 420-12 to -13.
6 Two days later, this money was transferred to the Kalayjian
7 Account. Dkt. No. 420-4 at 23. Ms. Kalayjian asserts that she
8 withdrew this money as compensation for six years of running
9 One if by Land. Dkt. No. 471 at 9-10.

10 As I've already noted, trial commenced in this case at
11 the end of March 2022 and resulted in a jury verdict in April
12 2022. On June 16, 2022, Ms. Kalayjian represents that she and
13 Mr. Ghatanfard acted "out of an abundance of caution" to
14 "formalize [her] ownership interests in OGR by amending the OGR
15 Operating Agreement" to transfer 90% of Mr. Ghatanfard's
16 interest in OGR to Ms. Kalayjian. Dkt. No. 471 at 13; Dkt.
17 Nos. 420-23 to -24. During his deposition in the separate
18 litigation against VATP, Mr. Ghatanfard did not recall this
19 assignment of his interests and amendment of OGR's operating
20 agreement. Dkt. No. 420-11 at 13-14, 16, 18-19, 20-21. Ms.
21 Kalayjian testified at her deposition that she could recognize
22 both her and Mr. Ghatanfard's signatures on the OGR assignment
23 agreement and amendment to the operating agreement. Dkt. No.
24 420-27 at 12-15. I also note that OGR's 2021 K-1, which
25 Plaintiffs assert was filed in August 2022, lists Ms. Kalayjian

1 as a 90% member of OGR. Dkt. No. 471-43.

2 As of his May 4, 2023, deposition, Mr. Ghatanfard,
3 previously a multi-millionaire, represented that he essentially
4 has no assets other than "some clothes and an old car." Dkt.
5 No. 420-11 at 6.

6 In total, Plaintiffs assert that a sum of
7 \$3,935,555.68 was deposited by Mr. Ghatanfard into the Joint
8 Account and then transferred to Ms. Kalayjian's personal
9 accounts over the course of the period from September 2020 to
10 June 2022. This figure does not include the change in title
11 for the Southampton House, the 90% of interest in OGR, and the
12 unknown disposal of Mr. Ghatanfard's interests in the
13 restaurant Bellasera.

14 III. ANALYSIS.

15 Plaintiffs seek the following relief: (1) an order
16 attaching certain of Ms. Kalayjian's assets, which Plaintiffs
17 value up to \$3,935,555.68, her ownership interest in OGR, and
18 her joint tenancy with a right of survivorship in the
19 Southampton House; and (2) an order permitting Plaintiffs to
20 discover additional assets of Ms. Kalayjian. Dkt. No. 420-34.
21 Plaintiffs request that the Court direct Plaintiffs to provide
22 an undertaking, if the order of attachment is granted, in a
23 fixed amount no greater than \$13,000. *Id.* at 30. These orders
24 would, absent a change in circumstances, remain in place
25 pending the resolution of Plaintiffs' turnover proceedings, as

1 they attempt to actually recover on Ms. Kalayjian's assets as
2 voidable transactions under New York law.

3 A. Order of Attachment.

4 Plaintiffs seek to enforce the partial judgment and
5 damages award in this case through an order of attachment.

6 Federal Rule of Civil Procedure 69(a)(1) provides:

7 "A money judgment is enforced by a writ of execution,
8 unless the court directs otherwise. The procedure on
9 execution-and in proceedings supplementary to and in aid of
10 judgment or execution-must accord with the procedure of the
11 state where the court is located"

12 Turning then to New York law, CPLR § 6212(a) requires
13 that the plaintiff seeking an order of attachment "show, by
14 affidavit and such other written evidence as may be submitted,
15 that there is a cause of action, that it is probable that the
16 plaintiff will succeed on the merits, that one or more grounds
17 for attachment provided in [CPLR] section 6201 exist, and that
18 the amount demanded from the defendant exceeds all
19 counterclaims known to the plaintiff."

20 CPLR § 6201, in turn, provides that:

21 "An order of attachment may be granted in any action .
22 . . where the plaintiff has demanded and would be entitled . .
23 . to a money judgment against one or more defendants, when:

24 . . .

25 (3) the defendant, with intent to defraud his

1 creditors or frustrate the enforcement of a judgment that might
2 be rendered in plaintiff's favor, has assigned, disposed of,
3 encumbered or secreted property, or removed it from the state
4 or is about to do any of these acts; or

5 . . .

6 (5) the cause of action is based on a judgment, decree
7 or order of a court of the United States"

8 Whether to grant or deny an order of attachment is a
9 matter of the Court's discretion, even when the statutory
10 requirements are met. *See Iraq Telecom Limited v. IBL Bank*
11 *S.A.L.*, 43 F.4th 263, 272 (2d Cir. 2022) (holding that courts
12 have discretion in deciding motions for attachment, including
13 by considering extraordinary circumstances, even when statutory
14 requirements are met); *see also Bollenbach v. Haynes*, 2018 WL
15 4278347, at *2 (S.D.N.Y. May 29, 2018). In particular, the
16 Court must ensure that "the remedy is needed to secure payment
17 or obtain jurisdiction." *Capital Ventures International v.*
18 *Republic of Argentina*, 443 F.3d 214, 222 (2d Cir. 2006) ("It
19 has discretion to the extent that these determinations require
20 weighing of evidence and also in balancing competing
21 considerations."); *see also BSH Hausgerate, GmbH v. Kamhi*, 282
22 F. Supp. 3d 668, 671 (S.D.N.Y. 2017). If the statutory
23 grounds—including likelihood of success on the merits—are met
24 and the necessity of the attachment is shown, however, the
25 Court ordinarily must grant the order of attachment. *Capital*

1 *Ventures International*, 443 F.3d at 222 (noting a court's
2 "discretion does not permit denial" once these requirements are
3 met, "at least absent extraordinary circumstances and perhaps
4 even then"). Finally, because an order of attachment "is an
5 extraordinary remedy created by statute in derogation of common
6 law," it is "strictly construed in favor of those against whom
7 it is employed." *Brastex Corp. v. Allen International, Inc.*,
8 702 F.2d 326, 332 (2d Cir. 1983); accord *Bollenbach*, 2018 WL
9 4278347, at *2. But see, e.g., *DLJ Mortgage Capital, Inc. v.*
10 *Kontogiannis*, 594 F. Supp. 2d 308, 319 (E.D.N.Y. 2009) ("[A]ll
11 legitimate inferences should be drawn in favor of the party
12 seeking attachment...").

13 I will now proceed to analyze whether Plaintiffs have
14 shown, by the declarations and other written materials
15 submitted in support of their motion, that the elements of the
16 CPLR § 6212(a) test are met and that the order of attachment is
17 necessary. I find that Plaintiffs have done so.

18 1. CPLR § 6212(a).

19 Elements.

20 The only elements of CPLR § 6212(a) that require close
21 analysis are whether there is a cause of action and Plaintiffs'
22 probability of success on the merits, which here requires the
23 Court to examine the merits of Plaintiffs' anticipated turnover
24 proceedings against Ms. Kalayjian's assets from Mr. Ghatanfard.
25 See *DLJ Mortgage Capital, Inc.*, 594 F. Supp. 2d at 320

1 ("[P]roof of the merits of a plaintiff's claim, by definition,
2 helps satisfy the first two elements for attachment").

3 The other elements are clearly satisfied. I will
4 review them now. One or more grounds of CPLR § 6201 exists
5 here. From my perspective, most obviously, "the cause of
6 action is based on a judgment . . . of a court of the United
7 States," given that Plaintiffs are seeking to enforce and
8 recover on this Court's judgment against Defendants. See CPLR
9 § 6201(5). Ms. Kalayjian argues that this provision is not
10 applicable here because Ms. Kalayjian herself is not a
11 judgment-debtor, but this is not a requirement under the plain
12 text of the statute and is not adequately supported in Ms.
13 Kalayjian's briefing. I note, if it were, such proceedings
14 against any third party would not be permitted under the
15 statute.

16 Alternatively, for the reasons I will explain,
17 Plaintiffs have shown that "the defendant, with intent to
18 defraud his creditors or frustrate the enforcement of a
19 judgment . . . , has assigned, disposed of, encumbered or
20 secreted property." *Id.* § 6201(3). And because there are no
21 counterclaims asserted against Plaintiffs, "the amount demanded
22 from the defendant" naturally exceeds the counterclaims. *Id.* §
23 6212(a).

24 Proceeding to the remaining CPLR § 6212(a) elements, I
25 note that Plaintiffs principally rely on the recently enacted

1 New York Uniform Voidable Transactions Act ("UVTA"), including
2 the provision for voidable fraudulent transfers in the New York
3 Debtor and Creditor Law ("DCL") § 273(a)(1).

4 DCL § 273(a)(1) provides:

5 "(a) A transfer made or obligation incurred by a
6 debtor is voided as to a creditor, whether the creditor's claim
7 arose before or after the transfer was made or the obligation
8 was incurred, if the debtor made the transfer or incurred the
9 obligation:

10 (1) with actual intent to hinder, delay or defraud any
11 creditor of the debtor."

12 A creditor making a claim for relief under § 273(a)
13 must prove the elements of the claim by a preponderance of the
14 evidence. *Id.* § 273(c).

15 As an initial matter, Plaintiffs and Ms. Kalayjian
16 dispute whether all of the transactions in question constitute
17 "transfers" under the UVTA. "Transfer" is defined by the UVTA
18 as "every mode, direct or indirect, absolute or conditional,
19 voluntary or involuntary, of disposing of or parting with an
20 asset or an interest in an asset, and includes payment of
21 money, release, lease, license, and creation of a lien or other
22 encumbrance." DCL § 270(p).

23 Plaintiffs assert that the change in the title to the
24 Southampton House from sole ownership to a joint tenancy shared
25 by Mr. Ghatanfard and Ms. Kalayjian constitutes a "transfer."

1 Dkt. No. 420-34 at 21-22. They do not dedicate briefing space
2 to explain that argument. Nonetheless, the Court concludes
3 that they have adequately established that it constituted a
4 transfer under the UVTa. "A joint tenancy is an estate held by
5 two or more persons jointly, with equal rights to share in its
6 enjoyment during their lives, and creating in each joint tenant
7 a right of survivorship." *Goetz v. Slobey*, 908 N.Y.S.2d 237,
8 239 (1st Dept. App. Div. 2010). By changing the title to the
9 Southampton House, Mr. Ghatanfard parted with half of his
10 interest in the property almost immediately, as well as others
11 of his rights and interests, such as the right to dispose of
12 the property without the consent of Ms. Kalayjian. And, of
13 course, the result of the transaction is that 100% of the value
14 of the property would be transferred automatically to Ms.
15 Kalayjian on her death.

16 Given his partner joint tenancy in the property
17 constitutes a transfer of an "interest in an asset." Again,
18 "transfer" includes every mode of transfer, whether direct or
19 indirect, or conditional, and it includes encumbrances, such as
20 limitations on the right of the owner to make unitary decisions
21 regarding the asset, as the statute provides. The transfer
22 includes the creation of a lien or other encumbrance.

23 The other "transfers" at issue are the numerous
24 deposits Mr. Ghatanfard made into the shared Joint Account that
25 were then substantially or in whole transferred to Ms.

1 Kalayjian's personal accounts as well as the assignment of 90%
2 of the interest in OGR to Ms. Kalayjian. On their face, these
3 constitute "transfers" under the UVA.

4 Ms. Kalayjian objects that half of the funds at issue
5 that were moved from the Joint Account into her personal
6 accounts are rightfully hers and therefore are not part of a
7 "transfer." Dkt. No. 470 at 8. Plaintiffs respond that the 2d
8 Cir. expressly rejected this argument in the context of a
9 Connecticut statute that is similar in text. Plaintiffs also
10 argue, as I understand it, undisputedly, that Ms. Kalayjian's
11 idea of the immediate half-split is incorrect, because each
12 tenant is presumed to possess the entirety of a joint account,
13 not just half, and Ms. Kalayjian has failed to rebut that
14 presumption. See *Viggiano v. Viggiano*, 523 N.Y.S.2d 874, 874
15 (2d Dep't 1988) ("The opening of a joint bank account creates a
16 rebuttable presumption that each named tenant is possessed of
17 the whole of the account so as to make the account vulnerable
18 to the levy of a money judgment by the judgment creditor of one
19 of the joint tenants."); See also *Mirlis v. Greer*, 80 F.4th
20 377, 384 (2d Cir. Aug. 30, 2023) (holding that a "transfer"
21 under Connecticut's UVTA equivalent occurred when debtor's wife
22 withdrew funds deposited by debtor into joint account). The
23 Court is inclined to agree with Plaintiffs as a result. But in
24 any case, to some degree, when the transfers happened is not
25 fully dispositive here, as Ms. Kalayjian does not dispute that

1 what she describes as "her half" of the funds in question is
2 now in her personal accounts. Since that half derived from
3 transfers of assets from Mr. Ghatanfard, that is, the
4 collective assets of DG's assets in the joint account, it is
5 subject to attachment.

6 Proceeding to the remaining elements of DCL §
7 273(a)(1), the only truly disputed element is whether
8 Plaintiffs have demonstrated that Mr. Ghatanfard made the
9 transfers in question with the requisite "actual intent." And,
10 despite the high bar required to show such actual intent, I
11 find that Plaintiffs have shown a likelihood of success on
12 their claim here; that is, that they have shown that it is
13 sufficiently probable.

14 "Because 'fraudulent intent is rarely susceptible to
15 direct proof,' courts in the Second Circuit have examined
16 whether allegedly suspicious transactions exhibit 'badges of
17 fraud' that give rise to a sufficient inference of intent."
18 *Yong Xiong He v. China New Star Restaurant, Inc.*, 2020 WL
19 6202423, at *6 (E.D.N.Y. Oct. 22, 2020) (quoting *DLJ Mortgage*
20 *Capital, Inc.*, 594 F. Supp. 2d at 320) (analyzing CPLR §
21 6201(3) showing). "The existence of several badges of fraud
22 can constitute clear and convincing evidence of actual intent
23 to defraud creditors." *Id.* (quoting *In re MarketXT Holdings*
24 *Corp.*, 376 B.R. 390, 405 (Bankr. S.D.N.Y. 2007)). These
25 "badges of fraud" include:

1 (1) [T]he lack or inadequacy of consideration; [(2)]
2 the family, ... friendship or close associate relationship
3 between the parties; (3) the retention of possession, benefit
4 or use of the property in question; (4) the financial condition
5 of the party sought to be charged both before and after the
6 transaction in question; (5) the existence or cumulative effect
7 of a pattern or series of transactions or course of conduct
8 after the incurring of debt, onset of financial difficulties,
9 or pendency or threat of suits by creditors; and (6) the
10 general chronology of the events and transactions under
11 inquiry. *Id.* (quoting *CF 135 Flat LLC v. Triadou SPV N.A.*,
12 2016 WL 5945912, at *10 (S.D.N.Y. June 24, 2016)).

13 Notably, these significantly overlap with the 11
14 non-exclusive factors provided in DCL § 273(b) for the
15 determination of the debtor's actual intent under § 273(a)(1).
16 These factors are:

- 17 (1) the transfer or obligation to an insider;
18 (2) the debtor retained possession or control of the
19 property transferred after the transfer;
20 (3) the transfer or obligation was disclosed or
21 concealed;
22 (4) before the transfer was made or obligation was
23 incurred, the debtor had been sued or threatened with suit;
24 (5) the transfer was of substantially all the debtor's
25 assets;

1 (6) the debtor absconded;

2 (7) the debtor removed or concealed assets;

3 (8) the value of the consideration received by the
4 debtor was reasonably equivalent to the value of the asset
5 transferred or the amount of the obligation incurred;

6 (9) the debtor was insolvent or became insolvent
7 shortly after the transfer was made or the obligation was
8 incurred;

9 (10) the transfer occurred shortly before or shortly
10 after a substantial debt was incurred; and

11 (11) the debtor transferred the essential assets of
12 the business to a lienor that transferred the assets to an
13 insider of the debtor.

14 DCL § 273(b).

15 I find that Plaintiffs have shown a likelihood of
16 success of proving Mr. Ghatanfard's actual and fraudulent
17 intent to engage in these transfers to Ms. Kalayjian to evade
18 judgment. Before I proceed to the analysis, I want to
19 emphasize that I am not making ultimate findings of fact or
20 determinations of liability under DCL § 273, and that I am
21 making these determinations today based on the preliminary
22 facts before me regarding the attachment request presented
23 here. I also fully understand Ms. Kalayjian's overarching
24 point that many people live the way she does, or did, with Mr.
25 Ghatanfard, without formalizing the nature of their shared

1 lives.

2 Turning to the "badges of fraud" present here, I note
3 that Plaintiffs and Ms. Kalayjian do not dispute the basic
4 nature, amount, and timing of the transactions at issue, which
5 are also supported by declarations and other written materials
6 submitted to the Court. I will go over each of these
7 transactions briefly. Then I will comment on some of the
8 additional badges of fraud.

9 The Canterbury House sale occurred in 2020, three
10 years into this lawsuit, and the entirety of the \$1,237,762.50
11 was deposited into the Joint Account and then, within the next
12 5 days, \$1.25 million, which includes the full sale proceeds of
13 the Canterbury House, was deposited into Ms. Kalayjian's
14 personal account and out of Mr. Ghatanfard's reach. I
15 acknowledge Ms. Kalayjian may have put in a lot of work into
16 the house, but the evidence that this transfer was actually
17 intended to be compensation for that work does not outweigh the
18 other indicia of fraud; nor does it sufficiently establish that
19 the transfer was made for a reasonably equivalent value. That
20 the entire proceeds were transferred so quickly out of Mr.
21 Ghatanfard's reach, rather than remaining in the commingled
22 Joint Account that Ms. Kalayjian's counsel emphasizes as
23 representing the shared, joint lives the two lead together
24 supports the conclusion that the initiative here was motivated
25 by an intent to defraud the judgment creditors. Therefore, and

1 for the other reasons that I am going to describe, I find that
2 plaintiffs have shown a likelihood of success with respect to
3 showing fraudulent intent with respect to this transfer.

4 Valbella Midtown distributions: From Sept. 2020 to
5 Sept. 2021, a series of deposits totaling \$800,000 were
6 deposited into the Joint Account. Within a few days after each
7 transfer, again often within two days but sometimes a few more,
8 \$675,000 in total out of that \$800,000 was transferred to Ms.
9 Kalayjian. Ms. Kalayjian asserts that she is entitled to \$400k
10 by law, by virtue of her entitlement to half the joint account
11 and otherwise justifies the \$275,000. The law is that
12 Plaintiffs, as creditors, may seek the entirety of the
13 \$800,000, and again, the timing, nature, and lack of evidence
14 as to this being compensation for a reasonably equivalent value
15 is sufficient, together with the other factors that I will
16 describe, to show that Plaintiffs have a likelihood of success
17 in demonstrating fraudulent intent with respect to this
18 transfer.

19 Southampton House refinancing: This occurred in
20 January 2022, five years into the litigation. I acknowledge
21 the alternative explanation presented by Ms. Kalayjian
22 regarding the timing of this transaction, namely, that the
23 concern was rising floating interest rates at the time. But,
24 again, \$1,422,798.18 was deposited into the Joint Account and
25 then, two days later, the exact amount was transferred into Ms.

1 Kalayjian's personal account. For the same reasons as the
2 Canterbury House sale proceeds, this is indicative of
3 fraudulent intent.

4 One if by Land proceeds: In November 2021, \$600,000
5 of the proceeds were deposited into the Joint Account and then
6 again, two days later, the same amount was transferred to the
7 Kalayjian Account. Ms. Kalayjian asserts that this is
8 compensation for her prior work on the restaurant, but there is
9 insufficient evidence that this represented a reasonably
10 equivalent value for that labor. Again, on the facts before
11 me, Plaintiffs have shown a likelihood of success in showing
12 that this transfer was accomplished with fraudulent intent.

13 There are two other transfers that are not strictly
14 monetary that I will address.

15 The Southampton House title transfer: This transfer
16 occurred in late March 2022, about a week before trial in this
17 case. The timing is suspect, again. I appreciate that Ms.
18 Kalayjian had been living in this house for a long time with
19 Mr. Ghatanfard as his partner at this point. But in changing
20 the title of the house to a joint tenancy, Mr. Ghatanfard
21 transferred an interest in his right to the property to Ms.
22 Kalayjian at least equivalent to a lien as a joint tenant.
23 This encumbrance, coupled with the timing of the event, is
24 strongly indicative of fraudulent intent, together with the
25 other badges of fraud that I will describe in a moment.

1 With respect to the OGR interest transfer, I also find
2 a likelihood of fraudulent -- that the plaintiffs will be able
3 to show fraudulent intent because the OGR equity was solely in
4 Mr. Ghatanfard's name and because of the timing of the transfer
5 and the other indicia of fraud. I understand that there are
6 competing narratives as to why things were done in this way,
7 but the fact is that Mr. Ghatanfard was the owner of OGR on
8 paper when it was formed in February 2021, and there is nothing
9 to show that the \$1.3 million paid to OGR out of the Joint
10 Account in the following year was directed by or from Ms.
11 Kalayjian's personal funds. I acknowledge that \$600,000 was
12 paid out of Ms. Kalayjian's account, though it's not clear
13 where the source of that money is from. It is also
14 particularly relevant here that the assignment of the 90%
15 interest to Ms. Kalayjian occurred after a jury verdict was
16 rendered in this case, with a sizeable amount against Mr.
17 Ghatanfard.

18 I will add a few points about all of these transfers.
19 The only comparable transfer from Mr. Ghatanfard outside of
20 this period, as far as I am aware, is that of the January 2016
21 proceeds from a restaurant sale. This one sale, however, does
22 not diminish the suspicious nature of this flurry of activity
23 that occurred between 2020 to early 2022, as Mr. Ghatanfard
24 confronted the underlying litigation. Notably, courts have
25 recognized that the "badges of fraud" include the "pendency or

1 threat of suits," even if no verdict or judgment has yet been
2 issued. See, e.g., *Yong Xiong He*, 2020 WL 6202423, at *6; see
3 also NY DCL § 273(b)(4) ("before the transfer was made ..., the
4 debtor had been sued or threatened with suit").

5 Let me turn to some of the other badges of fraud.
6 These factors, as well as the close personal and business
7 partnership between Ms. Kalayjian and Mr. Ghatanfard, which I
8 do not believe is disputed, support the conclusion that Mr.
9 Ghatanfard acted in an attempt to defraud Plaintiffs or, at the
10 very least, to hinder, delay, or otherwise frustrate the
11 enforcement of the money judgment against Defendants and in
12 Plaintiffs' favor. Ms. Kalayjian also does not provide an
13 alternate explanation for the timing of these transactions.
14 She points to Mr. Ghatanfard's older age and that she is being
15 "compensated" or "reimbursed" for her own contributions, but
16 these reasons do not touch upon why these transactions happened
17 when they did. Mr. Ghatanfard's unfortunate recent medical
18 diagnosis, of course, occurred after the transactions and
19 therefore also cannot be part of a counter-explanation. Dkt.
20 No. 471 at 6 (diagnosis was in July 2023); today, however, I
21 recognize that counsel has represented that the diagnosis came
22 a year earlier. But again, that doesn't explain the timing of
23 all these transfers.

24 Adding to the badges of fraud is the fact that Mr.
25 Ghatanfard testified that, as of May of this year, he is now

1 essentially insolvent. This is one of the specific badges of
2 fraud that is the condition of Mr. Ghatanfard's position
3 following these transactions. He went from a multi-millionaire
4 to, in his words, a pauper. This is a fact that is a badge of
5 fraud recognized by the case law.

6 The record also suggests that Mr. Ghatanfard continues
7 to live as he did before, namely, in that he and Ms. Kalayjian
8 still live in the Southampton House as their primary residence,
9 with Ms. Kalayjian now paying the monthly mortgage on the house
10 out of her personal account, and that he uses Ms. Kalayjian's
11 credit card for personal expenses. Here, the third badge of
12 fraud is "the retention of possession, benefit, or use of the
13 property in question." Mr. Ghatanfard, despite these
14 transactions, is, as I understand it, still undisputably
15 obtaining the benefit of the transferred assets, including
16 living in this house in the Hamptons. Also, Ms. Kalayjian's
17 continuous emphasis on her shared and commingled finances and
18 the fact that she lives with Mr. Ghatanfard actually makes it
19 suspect that the approximately \$4 million at issue were
20 deposited into the Joint Account and then almost immediately
21 transferred out into Ms. Kalayjian's personal accounts, which
22 again is not disputed.

23 So considering all the facts and the various badges of
24 fraud, including the timing of the transfers, Mr. Ghatanfard's
25 financial condition following the transfers, Mr. Ghatanfard's

1 continued beneficial use of the assets, as a result of his
2 strong, personal relationship with Ms. Kalayjian, these are all
3 badges of fraud that support Plaintiffs' application for an
4 order of attachment here.

5 Accordingly, I find that Plaintiffs have shown a
6 likelihood of success on the merits of their cause of action
7 under DCL § 273(a)(1) to recover on Mr. Ghatanfard's voidable
8 fraudulent transfers to Ms. Kalayjian. This satisfies the
9 remaining elements of CPLR § 6212(a) for showing entitlement to
10 an order of attachment.

11 Plaintiffs also assert they could recover Ms.
12 Kalayjian's assets under DCL § 273(a)(2), which provides for a
13 claim of constructive fraudulent transfer, rather than actual
14 fraudulent transfer. Specifically, § 273(a)(2) requires a
15 showing that: "without receiving a reasonably equivalent value
16 in exchange for the transfer or obligation, . . . the debtor: .
17 . . (ii) intended to incur, or believed or reasonably should
18 have believed that the debtor would incur debts beyond the
19 debtor's ability to pay as they became due."

20 I do not have to reach this basis for Plaintiffs'
21 motion for an attachment, as I have already found that
22 Plaintiffs have shown a likelihood of success on their §
23 273(a)(1) claim. Of course, my reasoning as to whether Mr.
24 Ghatanfard received consideration of a "reasonably equivalent"
25 value for his transfers to Ms. Kalayjian likely applies to this

1 basis as well. Plaintiffs may choose to re-assert this claim
2 upon further discovery and resolution of their turnover
3 proceedings. For now, I will leave open the question of
4 whether it can be said that the potential, arguably likely,
5 judgment against Mr. Ghatanfard was a "debt" that Mr.
6 Ghatanfard "intended to incur, or believed or reasonably should
7 have believed that [he] would incur" at the time of these
8 transfers.

9 Finally, Plaintiffs assert they could recover Ms.
10 Kalayjian's assets at issue under DCL § 274(a), which provides:

11 "A transfer made or obligation incurred by a debtor is
12 voidable as to a creditor whose claim arose before the transfer
13 was made or the obligation was incurred if the debtor made the
14 transfer or incurred the obligation without receiving a
15 reasonably equivalent value in exchange for the transfer or
16 obligation and the debtor was insolvent at that time or the
17 debtor became insolvent as a result of the transfer or
18 obligation."

19 Ms. Kalayjian moves to strike Plaintiffs' briefing on
20 § 274(a) because Plaintiffs explicitly sought leave to file a
21 supplemental brief on the basis of asserting § 273(a)(2)
22 arguments and yet dedicated much of the supplemental brief
23 permitted by the Court discussing § 274(a). Dkt. Nos. 499,
24 504. This was not the basis upon which supplemental briefing
25 was granted.

1 It is unnecessary for the Court to consider this
2 argument, given that Plaintiffs' motion has already been
3 granted on other grounds. Accordingly, Ms. Kalayjian's motion
4 to strike is granted.

5 2. Necessity of the Attachment.

6 Having found that the statutory requirements for an
7 order of attachment under CPLR § 6212(a) have been met, I now
8 proceed to examine whether Plaintiffs have shown that an order
9 of attachment is necessary, such that I should exercise my
10 discretion to grant this "extraordinary remedy" of attachment,
11 or if any other extraordinary circumstances exist for the
12 Court's consideration.

13 As already described in detail, Mr. Ghatanfard-whether
14 with or without Ms. Kalayjian's cooperation-enabled the deposit
15 of millions of dollars into Ms. Kalayjian's personal bank
16 accounts, in addition to giving her joint tenancy of the
17 Southampton House and enabling her to take 90% interest in OGR.
18 This all occurred during the pendency of this litigation, or,
19 in the case of the OGR transfer, two months after the jury
20 verdict against Defendants.

21 Further, in his May 4, 2023 deposition, Mr. Ghatanfard
22 testified that he was essentially insolvent, owning no assets
23 other than "some clothes and an old car." Dkt. No. 420-11 at
24 6. In other words, there is serious cause for concern that Mr.
25 Ghatanfard engaged in significant efforts to put his

1 substantial assets out of reach of Plaintiffs to recover on
2 their judgment. As a result, Plaintiffs' only currently known
3 means of recovering any significant portion of the judgment
4 against Defendants is through Ms. Kalayjian's assets. Mr.
5 Ghatanfard's arguably inconsistent statements at his
6 deposition, as well as Ms. Kalayjian's I'll say vague
7 statements, provide no comfort to the Court as to Plaintiffs'
8 chances of recovery on their judgment without the attachment.

9 Having found that an order of attachment is necessary,
10 I do not find that any extraordinary circumstances exist here
11 to nevertheless find that attachment is not warranted. See,
12 e.g., *Iraq Telecom Limited*, 43 F.4th at 269, 272-73 (affirming
13 court's consideration of "extraordinary circumstances," which
14 included the effect of the attachment on a foreign economy and
15 interference with innocent third parties).

16 Accordingly, I find that an order of attachment on Ms.
17 Kalayjian is appropriate for the amount of \$3,935,555.68, as
18 well as her joint tenancy interest in the Southampton House and
19 the ownership interest in OGR. Also, to allow Ms. Kalayjian to
20 make necessary mortgage or tax payments and other living
21 expenses, the same restrictions imposed by the July 5, 2023 TRO
22 permitting Ms. Kalayjian to make normal-course transactions for
23 living expenses not to exceed \$10,000 per transfer will be
24 maintained, together with the other carveouts that I previously
25 established.

1 B. Undertaking.

2 Under CPLR § 6212(b), Plaintiffs must provide an
3 undertaking:

4 "On a motion for an order of attachment, the plaintiff
5 shall give an undertaking, in a total amount fixed by the
6 court, but not less than five hundred dollars, a specified part
7 thereof conditioned that the plaintiff shall pay to the
8 defendant all costs and damages, including reasonable
9 attorney's fees, which may be sustained by reason of the
10 attachment if the defendant recovers judgment or if it is
11 finally decided that the plaintiff was not entitled to an
12 attachment of the defendant's property."

13 I bear in mind that, according to the text of the
14 statute as I have just quoted it, the undertaking is
15 essentially security for any fees, costs, and damages incurred
16 by the subject of the order of attachment in case it is
17 eventually determined that Plaintiffs were not entitled to the
18 attachment. See CPLR § 6212(b).

19 The ultimate amount of the undertaking is at the
20 Court's discretion, as long as the amount meets the \$500
21 statutory minimum. See, e.g., *BSH Hausgerate*, 282 F. Supp. 3d
22 668, 672 n.2. However, "[c]ourts frequently set the
23 undertaking as a fraction of a percent of the value of the
24 attachment." *Yong Xiong He*, 2020 WL 6202423, at *16 (citing
25 cases ranging from 0.04% to 4.5%).

1 Plaintiffs suggest an undertaking of \$13,000. Ms.
2 Kalayjian notes that Plaintiffs' justification for that amount
3 leaves out her interest in the Southampton House or OGR, but
4 it's not clear to me that I have enough information also to
5 justify the \$400,000 counter.

6 I am going to invite brief argument on this, counsel.
7 I'll just posit that I think that the \$13,000 is way too
8 little, given the possible legal fees associated with this
9 issue.

10 I don't know if \$400,000 is too great, however, and on
11 that that I'm particularly interested in hearing from counsel
12 for Ms. Kalayjian about what damages she may incur, given the
13 scope of the carveouts that I have already provided, in other
14 words, what can't she do, how is she being harmed by the TRO as
15 we are litigating this case so that I can quantify the correct
16 amount.

17 Let me turn first to Ms. Kalayjian's counsel.
18 Counsel.

19 MR. SHIFRIN: Your Honor, as I said previously, these
20 are the entirety of her assets, liquid and illiquid alike. If
21 they are attached, she is certainly harmed in her inability to
22 live her life fully and spend the money as she deems fit for
23 herself. To me it strikes me as pretty comprehensive, the harm
24 that she is dealing with, having these assets.

25 THE COURT: Let me just ask, is she planning to sell

1 the Southampton house?

2 MR. SHIFRIN: I'm not aware of any plans to sell the
3 Southampton house, no.

4 THE COURT: Is she planning to divest herself of her
5 interest in the restaurant?

6 MR. SHIFRIN: No, she is not, your Honor.

7 THE COURT: Thank you.

8 **I'll take those off of the table for just the moment.**

9 Right now she is living on 10,000, so that's \$120,000
10 post tax.

11 What is she not able to do?

12 MR. GORDON: Your Honor, if I may address that.

13 THE COURT: That's fine.

14 MR. GORDON: She would not be able to make any
15 investments in other businesses. She likely would not be able
16 to take any kind of a meaningful vacation. She likely would
17 not be able to spend on clothing, food, and other living
18 expenses. I mean, she would likely not be able to perform any
19 improvements to the Southampton home should anything happen,
20 like that devastating flood.

21 I mean, \$10,000, given the quality of life that she
22 had been living prior to the attachment and when -- and she
23 certainly was spending more than \$10,000 a month. If she ever
24 were to separate from Mr. Ghatanfard, I would speculate that
25 her -- whatever settlement she might have reached with him

1 would have been well in excess of 10,000 a month.

2 THE COURT: Thank you. Good. Understood.

3 Counsel for plaintiff, why is 13,000 the right amount?

4 MR. KIRSCHENBAUM: I think in our original brief,
5 together with our TRO, we cited that there was sort of just a
6 certain percentage range and 13,000 falls within that range.

7 I think in terms of the issues that Ms. Kalayjian's
8 counsel have raised right now, there is not -- these aren't
9 really issues of damages. I understand that it's uncomfortable
10 to not be able to do more things than you want to do with your
11 money. But like your Honor said, there is not a specific
12 prospect on the table. We in fact don't know anything about
13 her assets. For all we know, she has plenty of money, in
14 excess of the restraint here, that she has full access to.
15 It's not clear to us what tangible damage at all there is, in
16 light of the Court's allowing her to use up to \$10,000 and live
17 her everyday life, pay her taxes, etc.

18 THE COURT: Thank you. Good.

19 MR. GORDON: Your Honor, may I just address the issue
20 of damages? My apologies.

21 THE COURT: That's fine. Please go ahead.

22 MR. GORDON: This has had a staggering irrevocable
23 impact on her life. Because in addition to running a
24 restaurant, she has been dealing with the debilitating nature
25 of Mr. Ghatanfard's health, and she has been forced to spend

1 time and resources defending herself in this case, and that,
2 coupled with attending to Mr. Ghatanfard's health issues, and
3 running a major restaurant, and having to pay counsel and
4 having to make herself available to counsel, which takes her
5 away from the restaurant and from Mr. Ghatanfard, has had an
6 impact on her that you can't even put a price on.

7 THE COURT: Understood.

8 Counsel, having considered the various arguments and
9 based on my review of the record, I believe that an undertaking
10 of \$150,000 is appropriate, given the costs associated with
11 litigating this issue and the potential damages.

12 In setting this amount, let me just note one thing. I
13 appreciate the arguments made by both sides, on plaintiffs'
14 side that they don't know that this is the full scope of
15 Ms. Kalayjian's assets; on defendant's side, this may be
16 limiting her ability to live the kind of life that she was
17 previously living; in other words, the \$10,000 a month is
18 insufficient. They are both fair points.

19 I will say one thing, which is that I set the \$10,000
20 monthly limit without a lot of data from Ms. Kalayjian about
21 her needs. I'm happy to consider an alternative proposal about
22 what that amount should be. If she needs more money, please
23 confer with plaintiffs and write me. I'm happy to consider
24 changing that amount. My goal here is to keep her from
25 dissipating assets, but I appreciate that if these are her

1 assets from which she is living that I should take that into
2 account, and I would welcome more data.

3 MR. KIRSCHENBAUM: Your Honor, a quick question.

4 THE COURT: Yes.

5 MR. KIRSCHENBAUM: Can that go both ways? Inasmuch as
6 if she needs more money to live her life and we reach an
7 agreement, that that would then reduce the amount of the
8 required undertaking?

9 THE COURT: Thank you.

10 I'll let the parties talk that over. If you can reach
11 agreement on that, I'm happy to hear your proposals.

12 Let me just take up very briefly the application for
13 enforcement-related discovery.

14 I will just say the following.

15 C. Enforcement-Related Discovery

16 Federal Rule of Civil Procedure 69(a)(2) provides: "In
17 aid of the judgment or execution, the judgment creditor . . .
18 may obtain discovery from any person-including the judgment
19 debtor-as provided in these rules or by the procedure of the
20 state where the court is located." New York CPLR § 6220, in
21 turn, provides: "Upon motion of any interested person, at any
22 time after the granting of an order of attachment and prior to
23 final judgment in the action, . . . the court may order
24 disclosure by any person of information regarding any property
25 in which the defendant has an interest, or any debts owing to

1 the defendant."

2 I agree with Plaintiffs that some discovery is
3 warranted, given the serious concerns here about Mr.
4 Ghatanfard's intent to hide his assets from the judgment. I
5 also don't believe I've seen an explanation from Ms. Kalayjian
6 on the identity of the unidentified account ending in -3510
7 that \$1.4 million from the Southampton House refinancing was
8 purportedly deposited into. See Dkt. No. 420-19.

9 Now, at the same time, plaintiffs have been pursuing
10 discovery to enforce the judgment against defendants, I have
11 heard from counsel for Ms. Kalayjian earlier today that there
12 is a large volume of other discovery that's happening in
13 parallel to this case.

14 As a result, while I appreciate some additional
15 discovery may be needed here, to the extent that the request is
16 that I grant carte blanche for all discovery of all types, I'm
17 not going to open the door to that right now. If there are
18 particular avenues of discovery that you want to request in
19 support of these applications, what I'd ask you to do is to
20 discuss it with counsel for defendant and to seek leave from
21 the Court with more specificity as to what it is that you seek.

22 Again, I think that you are entitled to some discovery
23 under the rules. I do want to, however, encourage the parties
24 to confer about the appropriate scope of the discovery, and the
25 request here is sort of, I'll call it, a little unclear about

1 this sweeping or not sweeping scope of discovery that
2 plaintiffs are requesting.

3 Go ahead, counsel.

4 MR. KIRSCHENBAUM: Your Honor, if I may, just to get
5 out there exactly the discovery we are looking for and to get
6 it out there, if that's OK, so that we don't come back with a
7 discovery dispute about what the scope your Honor envisioned,
8 what we really need is simply the chain of cash, what are the
9 bank accounts that we could collect from, what are the cash
10 assets and other assets that could satisfy -- that would
11 satisfy this judgment if we were going to execute on it.

12 THE COURT: Let me just ask -- and I apologize because
13 I know that these depositions were taken in the other case.
14 Are those questions that you pursued with Ms. Kalayjian in the
15 deposition?

16 MR. BUZZARD: We know of at least -- just to get to
17 the nitty gritty, we know of at least two accounts that we
18 don't have any information about. One is the Citibank account
19 that you referenced from which Ms. Kalayjian is paying the
20 mortgage on the Southampton property and into which there have
21 been millions dollars of transfers that came from Valbella At
22 The Park restaurant to Oak Grove Road, and then into
23 Ms. Kalayjian's personal Citibank account. We know that there
24 is a string of transfers into that account, and we suspect that
25 there is substantial funds in that account. That was one --

1 that account was the subject of one of our subpoenas. We
2 attempted to get information about that account. And
3 Ms. Kalayjian moved to quash that subpoena. That is currently
4 before your Honor. That's one issue.

5 The second is this unidentified account into which the
6 \$1.4 million from the refinance went. We are not sure where
7 that account is. We asked Ms. Kalayjian about that account in
8 the information subpoena. We did not get a response
9 identifying that account. We would like to conduct discovery
10 of that account. To the extent there are other accounts that
11 Ms. Kalayjian owns, we need to know what those are and where
12 they are.

13 THE COURT: Thank you.

14 I'll hear from counsel for Ms. Kalayjian. Any
15 concerns about that scope of discovery? I understand that you
16 may take the position that they have already sought this. But
17 anything else that you want to share?

18 MR. GORDON: The only, I guess, qualification I would
19 like to make is in response to plaintiffs' information
20 subpoenaed to Ms. Kalayjian about these counts. We objected to
21 those inquiries as being overbroad and unnecessary. And
22 because the money was hers, they were not entitled to get the
23 information.

24 Similarly, I thought that they had sufficient
25 information regarding the Citibank account. I may be wrong.

1 I'm happy to meet and confer with them to discuss discovery
2 with these parameters, i.e., the chain of bank accounts as
3 represented by Mr. Kirschenbaum.

4 THE COURT: Thank you.

5 The scope of discovery that the parties are talking
6 about now sounds, I'll just say provisionally, to be within
7 bounds. I do ask the parties to meet and confer about it and
8 to do your best to eliminate duplicative discovery that may
9 have been sought between the two actions.

10 Go ahead, counsel.

11 MR. KIRSCHENBAUM: There was one more thing, your
12 Honor, which is, essentially, to the extent that there is
13 additional evidence or arguments that defendants intend to set
14 forth that have not been raised -- in other words, we think we
15 know what we are dealing with at this point, given debriefing
16 on the TRO and the depositions we have taken to date.

17 THE COURT: Let me just pause you, and I apologize. I
18 just want to end. I have taken a lot of your time.

19 I see two different questions here. One is discovery
20 in support of the attachment action, and two is discovery in
21 support of any potential future turnover proceeding that hasn't
22 yet been filed. I just want to note that I understand that we
23 are talking now about bucket 1 and not yet discovery in bucket
24 2.

25 MR. KIRSCHENBAUM: What I understand is that the

1 discovery I was referring to, which is the disclosures under
2 6220, is essentially a bridge between pocket 1 and pocket 2.
3 If defendants -- if there is going to be a turnover proceeding
4 with a trial, then if Ms. Kalayjian is going to make other
5 arguments than what we have heard today, or if she is going to
6 present other testimony than what we have seen to date, then
7 that's the type of discovery -- the second type of discovery.

8 THE COURT: Thank you.

9 I'll hear from the parties on that. I think that that
10 is all bucket 2, as I understand it. In other words, those are
11 facts supporting their arguments in opposition to the turnover
12 action. Let's leave it at that.

13 Counsel, thank you much for your time. Thank you very
14 much for your briefing. It was very thoughtful.

15 I just want to respond to one of the things that Ms.
16 Kalayjian's counsel says, which is basically the sensitivity to
17 the way that she lives her life. I just say, I do recognize
18 that normal people do not document every little thing that they
19 do, so I appreciate that. At this same time, I am required to
20 look at this in light of all of the, I'll call it, indicia of
21 fraud, and I emphasize, again, that my determinations here are
22 not the same as a determination on the merits based on the full
23 record. Instead, I am simply reviewing the probability of
24 success based on the standard that I have already set forth. I
25 hope that you will express that to your client.

1 Thank you all very much. This proceeding is
2 adjourned.

3 (Adjourned)

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